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(10) (11)

Nos. 99-1864 and 99-1865

In the
Supreme Court of the United States

JAMES B. HUNT, JR., *et al.*,
Appellants,

and

ALFRED SMALLWOOD, *et al,*
Appellant-Intervenors,

v.

MARTIN CROMARTIE, *et al.*,
Appellees.

On Appeal from the United States District Court
Eastern District of North Carolina

JOINT APPENDIX
Volume I of II
(pages 1 through 482)

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APPEAL DOCKETED MAY 23, 2000
PROBABLE JURISDICTION NOTED JUNE 26, 2000

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

DATE	CD#	ENTRY
7/3/96	1	Complaint
7/12/96	5/6	Motion with memorandum by Smallwood, Ward, Moore, Waddle and Hodges to intervene as defendants
8/27/96	10	Plaintiffs' motion to stay action
9/4/96	12	Order granting motion to stay
4/8/97	13	Plaintiffs' motion to extend stay
4/18/97	14	Order granting motion to extend stay
6/2/97	15	Plaintiffs' unopposed motion to extend stay
6/11/97	16	Order granting motion to extend stay
8/11/97	17	Plaintiffs' unopposed motion for further extension of stay
8/19/97	18	Order granting motion for further extension of stay
10/10/97	19	Plaintiffs' motion to dissolve stay
10/17/97	20	Order granting motion to dissolve stay
10/17/97	21	Amended complaint
10/17/97	22	Notice of voluntary dismissal by plaintiff Weeks
11/25/97	26	Answer to amended complaint
11/26/97	27/28	Motion with memorandum by Smallwood, Moore, Hodges, Davis, Valder, Offerman, Newell, Lambeth and Simkins to intervene as defendants
12/22/97	29	Plaintiffs' motion to amend complaint

1/15/98	31	Order, reassigning/referring case to Chief Judge Boyle
1/23/98	32	Designation of Three-Judge Court
1/30/98	33	Plaintiffs' motion for preliminary injunction
2/5/98	34/35	Plaintiffs' motion for summary judgment with memorandum and affidavits of Mortimer, Weatherley, Froelich and Everett
2/10/98	37	Defendants' motion to strike preliminary injunction motion for lack of supporting memorandum
2/17/98	38	Plaintiffs' response to motion to strike
2/18/98	39	Defendants' reply to plaintiffs' response to motion to strike
2/20/98	--	Notice of motion hearing for March 16, 1998 re: motion for preliminary injunction
2/23/98	40	Plaintiffs' memorandum in support of motion for preliminary injunction
2/25/98	41	Defendants' motion to consolidate preliminary injunction hearing with hearing on cross-motions for summary judgment
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3/2/98	44/45	Defendants' motion for summary judgment and memorandum
3/2/98	45	Defendants' response to motion for summary judgment

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3/2/98	48	Defendants' motion to strike affidavits of Everett, Froelich, Williams, Weatherley and Mortimer, with memorandum
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3/23/98	55	Plaintiffs' supplemental memorandum in support of motion for summary judgment and motion for preliminary injunction

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3/23/98	60	Affidavit of Timothy O'rourke by plaintiffs
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6/22/98	109	Order granting motion to file amicus brief by USA
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6/22/98	111	Order granting motion to intervene as defendants (Smallwood, Moore, Hodges, Davis, Valder, Offerman, Newell, Lambeth and Simkins)
6/22/98	112	Order directing: 1998 congressional elections proceed as scheduled in court's April 21, 1998 order; proceed with discovery and trial; parties to submit discovery schedules by June 30
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10/5/98	--	Clerk notation that an appeal in this case was docketed in the Supreme Court on September 16, 1998 as No. 98-450
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5/21/99	122	Opinion from United States Supreme Court: Judgment Reversed
6/21/99	123	Certified copy of judgment of United States Supreme Court
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7/14/99	125	Discovery plan by all parties
7/20/99	126	Defendants' withdrawal of motion to consolidate case with *Daly*
8/23/99	128	Order granting motions to dissolve stay, schedule discovery, expedite the trial and resetting discovery, motion filing deadline, and bench trial
8/25/99	129/130	Defendants' motion to amend answer to amended complaint, with memorandum

8/31/99	131	Order granting motion to amend answer to amended complaint. A ninth defense is added which states that plaintiffs have failed to state a claim for relief on the grounds that their claims are barred by the Doctrine of Claim Preclusion
8/31/99	132	Notice of attorney appearance as 2.05 counsel for plaintiffs by Douglas Markham, Houston, TX.
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10/12/99	137/138	Plaintiffs' motion to amend the complaint re: plaintiff Linville, with memorandum
10/18/99	139/140	Defendants' motion for summary judgment based on claim preclusion, with memorandum
10/18/99	140	Defendants' response to motion to amend the complaint re: plaintiff Linville
10/18/99	141/142	Plaintiffs' motion in limine to exclude the testimony of David West Peterson, with memorandum

10/20/99	144	Designation of Three-Judge Court adding Judge Lacy Thornburg to the panel of Judge Terrence Boyle and Judge Richard Voorhees
10/22/99	145	Order continuing trial from 11/1/99, to be rescheduled by further order
11/2/99	147	Notice of attorney appearance for plaintiffs by Seth Allen Neyhart as LR 2.05 counsel
11/8/99	148/149	Plaintiffs' motion for partial summary judgment as to the affirmative defense of claim preclusion, with memorandum
11/8/99	149	Plaintiffs' response to motion for summary judgment
11/8/99	150	Defendants response to motion in limine to exclude the testimony of David West Peterson
11/12/99	151	Defendant-intervenors' response to motion in limine to exclude the testimony of David West Peterson
11/12/99	152/153	Motion by Cass Ballenger, Howard Coble, Richard Burr, Sue Myrick, Walter Jones, Robin Hayes, and Charles Taylor to file amicus brief and make argument, with memorandum
11/17/99	156	Plaintiffs' reply to response to motion in limine to exclude the testimony of David West Peterson.
11/17/99	157	Order granting motion to file amicus brief and make argument

11/17/99	157	Order setting bench trial before Chief Judge Terrence W. Boyle, Judge Voorhees and Judge Thornburg for Monday, November 29, 1999 through December 2, 1999. Pretrial is to be complete by November 24, 1999.
11/22/99	158	Defendants' reply to response to motion for summary judgment
11/24/99	--	Deposition of Joel K. Bourne taken on 10/4/99
11/24/99	--	Deposition of Martin Luther Cromartie taken on 9/22/99
11/24/99	--	Deposition of Reuben Oscar Everett taken on 10/1/99
11/24/99	--	Deposition of Jacob Henry Froelich, Jr. taken on 9/30/99
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11/24/99	--	Deposition of Thomas Chandler Muse taken on 10/4/99
11/24/99	--	Deposition of Alma Lois Weaver taken on 10/4/99
11/24/99	--	Exhibits to the depositions docketed on 11/24/99
11/24/99	159	Initial pretrial order
11/29/99	160	Final pretrial order
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11/29/99	--	Deposition of Gerry Farmer Cohen taken on 9/17/99
11/29/99	--	Deposition of Roy Asberry Cooper, III taken on 9/9/99

11/29/99	--	Deposition of Linwood Lee Jones taken on 9/22/99
11/29/99	--	Deposition of David West Peterson taken on 9/20/99
11/29/99	--	Deposition of William Edwin McMahan taken on 10/1/99
11/29/99	--	Deposition of Gerald Raymond Webster taken on 10/2/99
11/29/99	--	Deposition of Charles Joseph Worth taken on 10/18/99
11/29/99	--	Bench trial held on Monday, November 29, 1999 before Judge Lacy Thornburg (presiding), Chief Judge Terrence W. Boyle and Judge Richard Voorhees, sitting
11/29/99	--	Oral order denying motion for leave to file amicus brief, denying motions, etc.
11/30/99	--	Transcript filed - bench trial proceedings on 11/29/99
11/30/99	--	Bench trial held on Tuesday, November 30, 1999 before Judge Lacy Thornburg (presiding), Chief Judge Terrence W. Boyle and Judge Richard Voorhees, sitting
11/30/99	--	Oral order by the panel granting motion to amend the complaint re: plaintiff Linville. The defendants' motion for summary judgment as to Linville is denied.
12/1/99	--	Transcript filed - bench trial proceedings on 11/30/99
12/1/99	161	Defendants'/defendant-intervenors' addendum to final pretrial order re: designation of deposition of Dr. Ronald Weber.

12/1/99	--	Deposition of Ronald E.Weber taken on 9/27/99
12/1/99	--	Deposition of Ronald E. Weber taken on 10/18/99.
12/1/99	--	Bench trial held on Wednesday, December 1, 1999 before Judge Lacy Thornburg (presiding), Chief Judge Terrence W. Boyle and Judge Richard Voorhees, sitting. Evidence closed and final argument heard.
12/2/99	--	Transcript filed - bench trial proceedings on 12/2/99
12/8/99	162	Amicus curiae brief by Republican congresspersons
3/7/00	164	Findings of act and conclusions of law signed by Boyle, CJ for the majority (Boyle and Voorhees). Concurrence and Dissent (Thornburg)
3/8/00	165	Judgment signed by Skinner, deputy clerk
3/10/00	166	Defendants' motion to stay the injunction so that the congressional elections can proceed.
3/10/00	167	Defendants' notice of appeal to Supreme Court
3/13/00	168	Plaintiffs' response to motion to stay the injunction
3/13/00	169/170	Defendant-intervenors' motion to stay the injunction, with memorandum
3/13/00	172	Order denying defendants' motion to stay the injunction
3/13/00	171	Defendant-intervenors'notice of appeal to Supreme Court
3/14/00	173	Judgment on motion to stay.

3/20/00	174	Plaintiffs' motion for attorney fees. Request that fees be deferred until final adjudication.

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STIPULATIONS FROM PRE-TRIAL ORDER (EXCERPTS)

24. Based on the 1990 Federal Census, 21.97% of the State's total population is African-American.
25. Based on the 1990 Federal Census, 20.07% of the State's voting age population is African-American.
26. District 12 in the 1997 plan is 46.67% African-American in total population and 43.36% African-American in voting age population.
27. District 1 in the 1997 plan is 50.27% African-American in total population and 46.54% African-American in voting age population.
28. In creating the 1997 Plan, the General Assembly split 22 counties.
29. Six of six counties were split in creating District 12 in the 1997 Plan.
30. While District 12 in the 1992 Plan contained parts of 10 counties, District 12 in the 1997 Plan contains parts of six counties.
31. Of the total population of Congressional District 12 in the 1997 plan, approximately 75% percent comes from parts of Mecklenburg, Forsyth and Guilford counties.
32. District 12 divides the populations of eight cities (Charlotte, Greensboro, High Point, Lexington, Salisbury, Statesville, Thomasville and Winston-Salem).
33. The dispersion compactness score of District 12 was 0.045 in the 1992 Plan.
34. The dispersion compactness score of District 12 is 0.109 in the 1997 Plan.

35. Approximately 25.7% of the African-Americans who were in District 12 in the 1992 plan were moved out of District 12 in the 1997 plan. Approximately 74.3% of the African-Americans who were in District 12 in the 1992 plan continue to be in District 12 in the 1997 plan.

36. Approximately 31.6% of all persons who were in District 12 in the 1992 plan were moved out of District 12 in the 1997 plan. Approximately 68.4% of all persons who were in District 12 in the 1992 plan continue to be in District 12 in the 1997 plan.

37. 41.6% of the geographic area assigned to District 12 in the 1992 Plan remained assigned to District 12 in the 1997 Plan.

* * *

40. On average, 76.4% of the geographic area in each of North Carolina's twelve congressional districts in the 1992 Plan was in the corresponding districts in the 1997 Plan, ranging from a high of 96.7% for District 11 to a low of 41.6% for District 12.

* * *

48. Each of the districts of the 1997 Plan is composed of contiguous territory.

* * *

52. For purposes of one person, one vote, a plan with almost zero deviation would contain approximately 552,386 persons in each of North Carolina's 12 congressional districts, based on the 1990 Federal Census.

53. Registered Democrats are prohibited from voting in Republican primaries and registered Republicans are prohibited from voting in Democratic primaries at the present time, and during all times relevant to this case.

54. Guilford County Precinct 11 is not within District 12 but is contiguous to that district. The precinct is 17.57% African-American in total population and 17.89% African-American in voting age population. Democrats comprise 62.32% of registered voters. Within this precinct, the Democratic candidate Gantt received 67.51% of the vote in the 1990 senatorial contest, the Democratic candidate Rand received 61.68% of the vote in the 1988 Lt. Governor contest, and the Democratic candidate Lewis took 52.98% of the vote in the 1988 Court of Appeals contest.

55. Guilford County Precinct 14 is not within District 12 but is contiguous to that district. The precinct is 15.19% African-American in total population and 15.24% African-American in voting age population. Democrats comprise 58.14% of the registered voters. Within this precinct, the Democratic candidate Gantt received 86.91% of the vote in the 1990 senatorial contest, the Democratic candidate Rand received 65.66% of the vote in the 1988 Lt. Governor contest,

and the Democratic candidate Lewis took 63.92% of the vote in the 1988 Lewis/Smith Court of Appeals contest.

56. Guilford County precinct 17 is not within District 12 but is contiguous to that district. The precinct is 9.09% African-American in total population and 8.64% African-American in voting age population. Democrats comprise 61.86% of the registered voters. Within this precinct, the Democratic candidate Gantt received 65.08% of the vote in the 1990 senatorial contest, the Democratic candidate Rand received 61.68% of the vote in the 1988 Lt. Governor contest, and the Democratic candidate Lewis took 58.19% of the vote in the 1988 Lewis/Smith Court of Appeals contest.

57. Forsyth County Brunson Elementary School Precinct is not within District 12 but is contiguous to that district. The precinct is 27.83% African-American in total population and 25.88% African-Americanin voting age population. Democrats comprise 65.75% of the registered voters. Within this precinct, the Democratic candidate Gantt received 75.46% of the vote in the 1990 senatorial contest, the Democratic candidate Rand received 66.30% of the vote in the 1988 Lt. Governor contest, and the Democratic candidate Lewis took 65.84% in the 1988 Lewis/Smith Court of Appeals contest.

58. Forsyth County Hanes Community Center precinct is not within District 12 but is contiguous to that district. The precinct is 32.06% African-American in total

population and 28.80% African-Americanin voting age population. Democrats comprise 76% of the registered voters. Within this precinct, the Democratic candidate Gantt received 75.77% of the vote in the 1990 senatorial contest, the Democratic candidate Rand received 71.68% of the vote in the 1988 Lt. Governor contest, and the Democratic candidate Lewis took 69.18% of the vote in the 1988 Lewis/Smith Court of Appeals contest.

59. Forsyth County Latham Elementary School Precinct is not within District 12 but is contiguous to that district. The precinct is 19.82% African-American in total population and 17.41% African-Americanin voting age population. Democrats comprise 65.25% of the registered voters. Within this precinct, the Democratic candidate Gantt received 54.85% of the vote in the 1990 senatorial contest, the Democratic candidate Rand received 53.86% of the vote in the 1988 Lt. Governor race, and the Democratic candidate Lewis took 55.87% of the vote in the 1988 Lewis/Smith Court of Appeals race.

60. Mecklenburg County Precinct 10 is not within District 12 but is contiguous to that district. The precinct is 6.9% African-American in total population and 5.42% African-American in voting age population. Democrats comprise 63.45% of the registered voters. Within this precinct, the Democratic candidate Gantt received 73.01% of the vote in the 1990 senatorial contest, the Democratic candidate Rand received 62.66% of the

vote in the 1988 Lt. Governor contest, and Democratic candidate Lewis received 55.78% of the vote in the 1988 Lewis/Smith Court of Appeals contest.

61. Mecklenburg County precinct 21 is not within District 12 but is contiguous to that district. The precinct is 10.51% African-American in total population and 7.84% in voting age population. Democrats comprise 59.45% of the registered voters. Within this precinct, the Democratic candidate Gantt received 60.11 of the vote in the 1990 senatorial contest, the Democratic candidate Rand received 52.32% of the vote in the 1988 Lt. Governor race, and the Democratic candidate Lewis took 48.30% of the vote in the 1988 Lewis/Smith Court of Appeals race.

62. The eastern and western portion of Congressional District 9 are linked by an area along the South Carolina border which constitutes the southern portion of Mecklenburg Precinct 77.

63. Mecklenburg Precinct 77 is split in the 1997 Congressional District plan between District 9 and District12.

* * *

74. Congressman Watt, an African-American, was re-elected in District 12 under the 1998 plan with 56% of the vote, with 82,305 votes to 42% for Republican "Scott" Keadle, a white candidate, with 62,070 votes,

with others, of unknown races, receiving 2% of the vote, with 2,713 votes.

75. Congressman Watt (Charlotte, NC) won the 1998 Democratic primary in District 12 under the 1998 plan with 84% of the vote, with 12,160 votes to 16% for Ronnie Adcock (China Grove, NC), a white Democrat, with 2,275 votes.

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OPENING STATEMENT OF TIARE B. SMILEY (EXCERPTS)

[*30] Ms. Smiley: In District 12 we contend that race did not predominate, that race was drawn for pure partisan reasons, as the Supreme Court said the State may do. We're not arguing that's a compelling state interest. We think the Supreme Court told us in *Shaw* you cannot draw a Section 2 district, therefore we're not arguing compelling **[*31]** state interest.

Our defense to District 12 is entirely separate. It's purely a factual matter and a matter a state is required to draw. I'm sorry if I didn't make it clear. That's entirely separate and the two parts of the state do end up being analytically just very different, but we're not attempting to say those are compelling.

With District 1, we don't believe you have to reach compelling state interest. That's merely race consciousness. Acceptance of race is important in this State. If you reach strict scrutiny, we believe we can establish that there is a compact district. The State drew that compact district. The other *Gingles* being conceded and we believe tailoring has been achieved. I'm sorry if I did speak too quickly. We're used to thinking about these questions. I probably rushed over that point.

Judge Thornburg: Call your first witness then.

Mr. Everett: Can I ask for clarification in connection with the last colloquey? As I understand it from the tenor of the opening statement, if we prove predominate racial purpose as to the 12th District, there's no contention there will be a restriction. I think the Supreme Court, in its opinion noting the matter had not been litigated before, I presume that was not subject -- there was no contention by the State as to

[*32] compelling government issue for the 12th District if it were predominately race based. I would like to clarify that. Obviously that will affect what we need to prove.

Ms. Smiley: The State has no reason to relitigate *Shaw*. We don't contend no compelling motive. We don't believe the State was required the same basis, strong basis in evidence to believe what had to draw a district in that area. There may be issues of racial affairs necessary, and other matters. Race is important in that North Carolina, the Democrats in that area, are African American. We are not contending we have a Voting Rights Act compelling state interest as a defense in that area.

HAMILTON HORTON TRIAL TESTIMONY (EXCERPTS)

[*32] A. My name is Hamilton Horton. I reside in Winston-Salem.

Judge Thornburg: You will have to turn up the mike. Let's try it again.

The Witness: My name is Hamilton Horton. I reside in Winston-Salem.

[*33] Q. What business or profession are you in?

A. I'm a lawyer.

* * *

[*34] Q. And have you had occasion to serve in the North Carolina General Assembly?

A Yes, sir.

Q. And if so, during what period or periods of time did you serve?

A. Let's see. I was elected in 1969 and served in the House in '71, in the Senate in '73, '73 in the Senate and again elected in 1994 to the Senate and reelected in '96, I guess it would be, and am still there.

Q. So you are currently a senator?

A. Yes, sir.

* * *

[*35] Q. In the course of your service in 1997, to what extent [*36] were you able to follow the development of a Senate Redistricting Plan?

A. Actually, very little. That was sort of handled by a couple of people of the other party who did most of the work. Seemed to me in camera. In any event, there was no involvement on my part or anyone else I knew on the Republican side.

Q. How many senators are there in the North Carolina Senate?

A. 50.

Q. So what extent then were most senators in the Senate during 1997 involved in the formulation of the 1997 Plan?

A. Several on our side of the aisle. It was very, very little, if any. I don't know but I would suspect a fairly liberal amount on the other side.

* * *

[*36] Q. In the course of your service as senator and running for office, have you become familiar with the different precinct in Forsyth County?

A. To some extent, yes, sir.

Q. Have you become familiar with their racial composition?

A. Yes, sir, pretty much.

[*37] Q. Have you become familiar with the political performance of the precinct there in Forsyth County?

A. Yes.

Mr. Everett: Your Honors, at this time we would like to use and examine him with what is Exhibit 108. My understanding is the one in the book before you that you all have is slightly different in coloration and what we will use is

the map that was used at the hearing in Morganton back in 1998.

Judge Thornburg: That's Plaintiff's Exhibit 108?

Mr. Everett: Yes, sir, I believe that's correct, Your Honor. That's a Joint Exhibit 108.

Q. Now, I'm going to show you a map. Can you see this?

A. Yes, sir.

Q. Ask you what that represents, if you know?

A. Apparently it is a map of Forsyth County, principally the center section would be the map of Winston-Salem.

Q. Let me ask you this: in Forsyth County, are African Americans the residences clustered or concentrated or are they dispersed throughout the county?

A. They are not dispersed evenly. There are pockets here and there -- but the main population center lies in the eastern part of Winston-Salem. Generally if you take the dividing line of the Cherry Marshall Expressway and [*38] University Parkway and everything to the east of that would tend to be heavy concentration of black and to the west would be a concentration of white population.

Q. So that in Winston-Salem itself they are concentrated in this particular area?

A. That's correct.

Q. Does the area shown in the red portion of the map tend to conform, to your knowledge, of the precinct that are majority black or substantially black residents or population?

A. I really can't see it that well from here. May I step down?

Judge Voorhees: You may.

(Witness leaves the witness stand).

Q. If you have a magnifying glass?

A. This does not have the street names on it, so it's very difficult to be precise, but this does clearly delineate the eastern and western portions of Winston-Salem.

Q. And --

A. I gather from this that this would be the heavy black population, as I've testified.

Q. This is listed as being 40 to a 100 percent black and insofar as Winston-Salem is concerned, is there any of those red 40 to 100 percent black precinct, which is not **[*39]** included in the 12th District?

A. I gather the blue line -- yes, sir, there is this one up here at the extreme northwest which appears to be outside of it and that appears to be the only one. This portion doesn't have a number on it, but looks like 61.65 percent.

Mr. Stein: Your Honor, we have stipulated that this exhibit is authentic, that it accurately represents what it purports to represent and suggest that this witness is simply going up and reading from Mr. Everett's exhibit and not testifying from personal knowledge. And this is a joint exhibit.

Judge Thornburg: We will let Senator Horton testify, of course, because he is knowledgeable, but it would expedite matters if you ask is this an accurate representation.

Mr. Stein: We have agreed to that.

By Mr. Everett:

Q. Anything you know about the one precinct that's outside of the district?

A. The one that is outside of the district.

(Witness returns to the witness stand).

That is not a heavy populated section of town. It's an extension of -- I believe, again, I can be corrected because the names of the streets aren't on the map, but **[*40]** it's my belief it's Palestine Avenue out there, which is a line of trailers, for several miles woods, are some streets back in there, small, very nice houses, I would say on about half acre lots. But in general that big box are stores and parking lots seem to dominate that area. It's not heavily populated, I guess is what I'm trying to say.

Q. Senator, let me ask you this. During the 1997 period -- while the '97 Redistricting Plan was being considered, did you have occasion to discuss the plan and its formulation with members of the General Assembly?

A. Just in passing, but not in any official capacity.

Q. Did you discuss it with both members of the House and Senate?

A. Oh, yes.

Q. Let me ask you this then: from your observation of this map and your knowledge of the precinct in Forsyth County that are included in the 12th District, can you state whether you formed an opinion as to the predominate motive of the General Assembly for drawing the boundaries of the 12th District in Forsyth County as drawn?

Mr. Stein: Objection, Your Honor. This witness is not here as expert witness. The issue before the Court is based on all the evidence that's presented. Whether the plaintiffs, in fact, prove their case. Everybody in **[*41]** North Carolina can express an opinion, but it's for the Court to decide it based on the evidence. He isn't offered as an expert witness. It is not the

function of one legislator to ascribe motives to the rest of the General Assembly.

Mr. Everett: May I respond, Your Honor?

Judge Thornburg: The objection is overruled. Let's move along.

By Mr. Everett:

Q. Please answer it. Do you have an opinion?

A. I do.

Q. What's that opinion?

A. Seems to me, in my opinion, is that it was an attempt to put the black population of Winston-Salem in the 12th District.

Q. And with respect to predominate motive, is it your opinion that was a predominate motive?

A. Yes, sir.

Q. Now, with respect to the 1998 plan, was there any changes in the grouping of the precinct in Winston-Salem as to African American, heavy African American percentage or did that remain the same --

Mr. Stein: Objection as to relevance.

Judge Thornburg: Overruled.

A. I'm afraid you will have to show me the map to be **[*42]** able to tell you that.

Q. From the map of Forsyth County that I've shown you and the map of the 12th District as a whole, which is under here, I'd like to ask you and also your discussions prior to the enactment of the plan: Did you form an opinion as to the motives of the General Assembly for drawing the boundaries of the 12th District as it was drawn?

Mr. Stein: Objection.

Judge Thornburg: Overruled.

A. I can speak insofar as the concentration of the population from personal experience only with respect to Forsyth County. And I do know that the portions in the12th District were those that are most exclusively black.

Q. Thank you, Senator.

* * *

[*42] Q. Senator Horton, I think you've told us that you weren't on the Redistricting Committee?

A. That's right.

Q. You didn't participate with those who were drawing the plan?

A. No.

Q. And you say there was principally Democrats in the **[*43]** Senate working on the plan?

A. That's right.

Q. In the House, on the other hand, there was a Republican majority in the House and a Republican Chair of the Redistricting Committee over there?

A. I believe that's right.

Q. Did you confer with RepresentativeMcMahan who was the Chair in the House of the Redistricting Committee about the plan?

A. No, sir.

Q. Did you speak at any public hearings about the plan?

A. No, I did not.

Q. Speak on the floor of the Senate about the plans before the Senate?

A. I don't recall. I very well may have, but I can't tell you yes or no.

* * *

[*45] Q. Isn't it true in Forsythe County there are precincts where the voting day results show higher in some elections, higher votes for Republicans than the Republicans registration?

A. Yes, sir.

Q. But there are precincts with majority of Democratic registration where Republicans sometimes prevail?

A. I think that's true all over the State.

STEVEN RAY WOOD TRIAL TESTIMONY (EXCERPTS)

[*48] Mr. Everett: We call -- Your Honor, the plaintiff calls Steve Wood.

Steven Ray Wood, being first affirmed, testified as follows during *Direct Examination*:

By Mr. Everett:

Q. Please state your name and residence.

A. Steven Ray Wood, 1221 North Main Street in High Point.

Q. How long have you resided in High Point?

A. Since 1978.

Q. That's in Guilford County?

A. Yes, sir, that's correct.

Q. What business or occupation are you in?

A. I'm a minister and educator and also a singer and song writer.

Q. What sort of education do you have for your particular business?

A. I'm a college graduate. Graduated from John Wesley College there in High Point. Also graduate of Edgeburg College, Masters Degree in History at the University of North Carolina Greensboro. Masters of Divinity Degree of Houston, Graduate School of Theology, Houston, Texas, and Doctorate at Lutheran Center.

Q. Have you ever served in the General Assembly of North [*49] Carolina and, if so, at what time?

A. Yes, sir. I served one term in the 1985 session, was involuntarily -- did not serve that next term, but came back in

1988 and served in the House since that time. And then my seventh term now.

Q. During your service in the General Assembly from what district were you elected, what county or cities are in that district?

A. Initially I was elected from House District 28, which was comprised exclusively of some two member district precincts in Guilford County. Since 1992, I served in House District 27, which includes parts of Guilford and parts of Davidson County.

Q. What's your political party?

A. Republican.

Q. Now, in the 1997 House of Representatives for the General Assembly, state whether you held any office or position and, if so, what that was?

A. In 1997 session?

Q. Right.

A. Yes. I was a member of the House and also served as Speaker Pro Tem of the House that session.

Q. State whether or not you had any committee memberships.

A. As Speaker Pro Tem under the House rules I served as **[*50]** a member of each committee of the House.

Q. While serving the General Assembly in 1997 and '98, please state whether or not you followed closely the development of one or more of the congressional redistricting plans.

A. Well, I followed it as closely as I could. As you know, the general public and most folks who followed that, became a

little confusing after awhile with all the plans, but I did try to follow it closely. Yes.

Q. Did you have any individual reasons somewhat unique to you for following the development of the congressional redistricting plan?

A. Well, I did. I had interest in possibly running for Congress in one of those, depending on how the redistricting took place, so I had some interest from that standpoint certainly.

Q. And did you, in fact, at a later time run for Congress?

A. Yes, I did.

Q. Now, before the General Assembly enacted a redistricting plan at the end of March 1997 to replace the 1992 Plan that the Supreme Court declared unconstitutional, did you hear a debate and discussion about the plan on the floor of the House of Representatives and among the members of the General **[*51]** Assembly?

A. Yes, I did.

Q. And did you participate in the discussions in that regard before the 1997 Plan? You talked to others as to the plan?

A. Yes.

Q. Now, let me ask you this: in the course of your service in the General Assembly, and in campaigning for election to the General Assembly, have you become familiar with the precincts in Guilford County?

A. Yes, I have a good general knowledge of the nature of precincts in Guilford County.

Q. As part of the process of becoming familiar with different precincts in Guilford County, did you become familiar with their racial composition?

A. Yes.

Q. And did you become familiar with the political registration and political performance of different precincts in Guilford County?

A. Yes, in a general sense, as far as specific statistics per precinct and that sort of thing. I could not recite those, but in terms of general knowledge and performance, voter registration, yes, sir.

* * *

[*55] Q. Mr. Wood, from looking at the map and your general knowledge in High Point there, there's a concentration of African Americans and in Greensboro there's a concentration and otherwise the population of Guilford [*56] County is mostly white?

A. Yes. In general terms, I think that's correct. Those two areas on the map though represent the heavy concentration of the African American voters in Guilford County, that's correct.

Q. Now, for the map and your personal observations and knowledge of the precincts and the population there in Guilford County, could you state whether you formed an opinion as to the predominate voters of the General Assembly for drawing the boundaries that were drawn in the 12th District?

Ms. Harrell: Objection.

A. Repeat the question.

Q. Absolutely. I asked whether from the map from your personal observation and your knowledge of the precincts there in Guilford County, could you state whether you formed an opinion as to the predominant motive of the General Assembly

for drawing the boundaries of the 12th District in Guilford County as they were drawn?

A. In Guilford County, yes, I have.

Q. What is that opinion?

A. Well, my opinion is that --

Judge Voorhees: Wait just a minute.

Mr. Everett: Your Honor, my colleague says on your maps there is a red line over on that side.

[*57] Judge Voorhees: Repose that question.

By Mr. Everett:

Q. Okay. From the map, from your personal observations and your knowledge of the precincts there in Guilford County, could you state whether you have formed an opinion as to the predominant motive of the General Assembly for drawing the boundaries of the 12th District in Guilford County as they were drawn?

Ms. Harrell: Renew our objection for the record.

Judge Thornburg: Overruled.

A. Yes, I have formed an opinion.

Q. What is that opinion?

A. My opinion is that they were included in the 12th District to encompass certain of those clusters; those two clusters of votes in the High Point area and the Greensboro area to include those in the 12th District.

Q. Was it your opinion then the predominate motive was racial?

A. Yes, it is.

Q. In the 1997 Plan, there were five other counties in addition to Guilford County, and I ask you whether you are

familiar with those other counties and the way they were divided in the 1997 Plan?

A. I'm familiar with them, obviously not as familiar as **[*58]** I am with Guilford County, but somewhat familiar with those other counties.

Q. Were those -- did you at some point run for the Congress?

A. I did.

Q. And in what district did you run and when?

A. I ran in the 12th District in the Republican primary in the 12th District in 1998.

Q. And did the 12th District, as that's constituted, consist of the five other counties besides Guilford County that were included in the 1997 Plan?

A. Yes, as I recall that's correct.

Q. So Forsyth, Davidson, Rowan, Mecklenburg -- and Mecklenburg, Iredell, Rowan, Davidson, Forsyth, they were included?

A. That's correct.

Q. Now, with respect to the 1997 Plan, and the dispersion or the allocation of the precincts, could you state whether you formed an opinion, from your observations of the precincts and these other five counties from the map and from the discussions that preceded the drawing of the enactment of the 1997 Plan, did you form an opinion as to the predominate motive for the division of the other five counties as they were drawn in the 1997 Plan?

[*59] A. Yes, I did form an opinion.

Ms. Harrell: Objection. Could we have a standing objection to the testimony about opinions as to the predominate

motive and grounds? It is opinion without adequate foundation.

Judge Thornburg: I'm not offended by your making it. You just go ahead. That's no problem.

Ms. Harrell: Whichever way the Court prefers.

Judge Thornburg: Just go right ahead.

By Mr. Everett:

Q. What was that opinion?

A. My opinion is that it was drawn to maximize to the fullest extent possible and include as many of those African American votes in those counties as possible.

Q. Is it your opinion that was a predominate move?

A. Yes.

Ms. Harrell: Objection.

Judge Thornburg: Overruled.

Q. Now, why did you run for Congress in the 12th District when you are no longer a resident of that district?

A. Well, in the original -- I say the original 12th District, as constituted in the '98 Plan, prior to that time it included some portions of my House District so it gave me a basis upon which to consider running for that **[*60]** House -- that congressional seat at that time.

Q. Did you have occasion while you were serving there Pro Tem in 1997 to hear discussions about the First District in the northeastern part of the State?

Ms. Harrell: Objection, hearsay, unless there's some particular identification as to what kind of discussion and its relevance.

Mr. Everett: Let me rephrase that then.

By Mr. Everett:

Q. Do you recall whether in connection with the drawing of the First District there was discussion in the General Assembly concerning preclearance and approval by the Department of Justice?

Ms. Harrell: Objection, hearsay, no foundation, relevance.

Judge Thornburg: Go ahead. Overruled.

A. Well, yes, I do recall that in general that the feeling was that --

Judge Thornburg: Well, sustained. Sustained.

By Mr. Everett:

Q. From your campaigning and your participation in the electoral process, have you formed an opinion to the extent to which African American voters in Guilford County voted for Democratic candidates versus Republican candidates?

[*61] A. Yes, I have formed an opinion.

Q. What is that opinion?

A. My opinion is that overwhelming, predominately the votes are for Democratic candidates as opposed to Republican candidates.

Q. Have you formed an opinion as to the extent to which the percentage of registered African American voters who vote for Democratic candidate increases if the candidate is an African American?

A. I have an opinion and it is yes, that's true.

Q. What is your opinion?

A. It is my opinion that they vote predominately for Democratic candidates.

Q. Now, from your campaigning and your participation in the electoral process, have you formed an opinion to the extent

to which, in North Carolina State, African Americans who are voting vote for Democratic candidates against Republican candidates?

A. I have.

Q. What is that opinion?

A. Is that they vote overwhelmingly in favor of Democratic candidates based upon my observation of the voting performance.

Q. Could you state whether you have an opinion as to whether the percentage of registered African Americans who [*62] vote for Democratic candidate increases if the Democratic candidate is African American?

A. It is my opinion, from my own research and observation, the trend is they vote, the turn-out is heavier and stronger.

* * *

[*62] Q. Representative Wood, I have a few questions for you. I believe you said you were Speaker Pro Tem in 1997; is that right?

A. In the '97, '98 session, that's correct.

Q. Okay. And you are a Republican yourself; is that right?

A. That's correct.

Q. And do you recall what the division between Republicans and Democrats in the House was in 1997?

A. Are you referring to the North Carolina House itself, of 121 members in the North Carolina House?

Q. Right.

A. Yes, I do.

Q. What was that division?

A. There were 61 Republicans and 59 Democrats, as I recall.

Q. Okay. And isn't it true that you were elected Pro [*63] Tem with a vote of 58 Democrats and only 3 Republicans?

A. That is true.

Q. And isn't it also true that after that you were excluded from the Republican caucus?

A. That is not true relative to the 1997, '98 session, no.

Q. It is not true?

A. No.

Q. And isn't it true that as Speaker Pro Tem you were not assigned to preside over the House and rule the gavel, so forth, by the Speaker at any time that session?

A. That is true.

Q. And when you ran for Congress in 1998, do you recall how many Republican candidates there were in the primary?

A. There were a whole lot, it seems to me, five or six. I think, more specifically, I think five or six at least.

Q. And is it consistent with your memory out of six Republican candidates you came in fifth?

A. That's correct.

Q. And that is it also true that you received 800 votes out of more than 12,000?

A. I think that's correct, around 7 percent. I didn't do well as I hoped to.

Q. So there were other candidates in the primary who were selected by most of the voters that voted in the [*64] primary and you were not one of them; is that right?

A. Well, I finished fifth in the primary elections, that's correct.

Q. Now, as Speaker Pro Tem, officially you were an exficio member of all House committees at that time; is that right?

A. That's right.

Q. And if the minutes that are in the record as stipulated exhibits show that there were four House committee meetings in 1997 involving redistricting and that you only attended one of them, would that be true? Do you deny that?

A. I don't recall if I attended all of the meetings. That may be correct.

Q. Okay. And you didn't speak at that meeting either, did you or do you recall?

A. I don't recall if I spoke at the specific meeting to which you refer about.

Q. You wouldn't dispute the minutes on that basis, would you?

A. Not from what I recall at this moment, no.

* * *

[*64] Q. Well, then 58 out of what, 59 Democrats voted for you [*65] to be the Speaker Pro Tem?

A. That's correct.

Q. So you had a good relationship with the Democrats?

A. I would like to think so, yes, sir.

Q. You knew pretty well why they were doing things such as redistricting, didn't you?

A. Yes, sir, I did.

Q. And is your testimony, as to the predominate motive, take that into account what you picked up from Republicans and Democrats?

Ms. Harrell: Objection.

Judge Thornburg: Overruled.

A. Yes.

Q. When you ran, you ran under the '98 Plan?

A. That's correct.

Q. And that was one for which your home county had been cut out?

A. That's correct.

Q. By the way, if you saw a document that refers to the Greensboro black community, would you be able to identify what that Greensboro black community is?

A. You say if I saw a document if --

Q. Let's see an e-mail which refers to the Greensboro black community being placed in the 12th District or removed from the 12th District?

[*66] A. If you mean in a geographic and demographic context, yes, I think -- yes, I believe I could.

Q. Do you think you could go to Greensboro and find and identify where that Greensboro black community was located?

A. Yes.

JOHN HUGH WEATHERLY TRIAL TESTIMONY (EXCERPTS)

[*66] Mr. Everett: John Weatherly.

John Weatherly, being first duly sworn, testified as follows during *Direct Examination*:

By Mr. Everett:

Q. Mr. Weatherly, I understand you have a slight hearing impairment. I'll try to speak louder so you can hear. I'm under the same boat, so I appreciate you doing the same.

State your name and your residence and how long you resided there.

A. My name is John Hugh Weatherly, reside 142 Quail Hollow Drive, Kings Mountain. I lived at that address for 22 years.

Q. And what business or profession, if any, are you in?

[*67] A. I'm retired. I retired as an industry forester for Bow Water Paper Company after a 35 year career as an industrial forester.

Q. Have you participated in politics in any way, and if so, in what way?

A. When I lived in Catawba County, I was a member of the County Board of Commissioners; in Cleveland County, I served in the General Assembly representing the 48th House District for eight years for the years '89, '90 and '93 through '98.

Q. And in the course of your service in the General Assembly, could you state whether or not you had occasion to serve on any commission or study group concerned with the electoral process in North Carolina?

A. I was a member of the Election Law Reform Study Commission and the House Election Laws Committee.

Q. In that capacity, did you develop a special interest in redistricting process in North Carolina?

A. I did. I had to sponsor two pieces of legislation so I had more than a passing interest in the currents of the elections.

Q. During what period of time were you serving in that study group and how many people were involved?

A. '96 and '97.

Q. So that was about the time the '97 Redistricting Plan [*68] was being prepared?

A. Yes.

Q. What is your political party, by the way?

A. Republican.

Q. Now, in connection with the -- with your interest in redistricting, did you later have occasion to propose legislation concerning the redistricting process?

A. Related -- I had two pieces. First piece concerned limited voting and appointment of elected positions without standing for election; that's related somewhat. It's a matter concerning Cleveland County in particular. But I also sponsored legislation in 1993 that would, by constitutional referendum, established independent nonpartisan redistricting commission.

Q. So then you are very concerned with the redistricting process?

A. Yes.

* * *

[*70] Q. All right. Now, were you familiar with the discussions of the General Assembly about the formation of the 12th District in 1997?

A. Yes, I was.

Q. And were you familiar with the boundaries generally of the 12th District in Mecklenburg County?

A. Not intimately, but I was aware that they were being redrawn to meet a requirement.

Q. Now, let me ask you this, and this is with respect to the '97 Plan: from your knowledge of the precincts there and the discussions in the General Assembly and otherwise, with respect to the '97 Plan, did you form an opinion as to the predominate motive for the dividing of Mecklenburg County between the 12th and the 9th Districts as it was divided in 1997?

A. Yes. There was overriding being directed to make a district that would be predominately racial.

Q. Was it your -- was it your opinion that the motive for splitting the Mecklenburg County in that way was predominately racial?

Mr. Stein: Objection.

[*71] Judge Thornburg: Overruled. You may answer.

A. Answer?

Q. Yes.

A. Yes, it was. But was it was definitely racial. It had to be to meet the requirement that the new district would be comprised, yes.

Q. Now, with respect to the rest of the 12th District, which is shown here in this larger map, did you become familiar back

in 1997 before the '97 Plan was adopted with the boundaries generally of the 12th District?

A. I observed the changes made and was very much under the impression that the original '92 version had been characterized as being bizarre and this version was somewhat less bizarre, was the general discussion.

Q. With respect to the predominate motive for drawing the 12th District, as just shown here on this map, which is up here, did you form an opinion as to the predominate motive for drawing the 12th District in that manner?

Mr. Stein: Objection.

Judge Thornburg: Overruled.

A. Yes.

Q. What is that opinion?

Mr. Stein: Objection.

Judge Thornburg: Overruled.

A. It was the requirement being met that it would be a [*72] racially gerrymandered district.

Q. In other words, that was the predominate motive for doing so?

A. Yes, sir.

* * *

[* 72] Q. Mr. Weatherly, I may have misunderstood you. I understood you to say that in the '97 Plan that Cleveland County was split between the 9th and the 11th District?

A. It's my recollection at the moment, yes.

Q. Let me -- before we go to that, let me show you what is a joint exhibit. This is the '92 Congressional Plan that the

Supreme Court found unconstitutional. In that plan, it seems to show that the 9th District included Mecklenburg, parts of Mecklenburg, all of Gaston, and parts of Cleveland. Do you recall that?

A. Yes.

Q. Cleveland was both in the 11th and 9th District in the '92 Plan. Do you recall that?

A. Yes.

Q. Now, do you recall which district you were in? Were you in the 9th or the 11th District?

A. The 9th.

Q. Then this other map that shows the 97 House/Senate [*73] Plan A, which is what we're having a lawsuit about here. It shows down at the bottom that Mecklenburg -- that whereas the 9th District had been in three counties, two of which were split, that the 9th District here is, again, part of Mecklenburg?

A. Yes.

Q. All of Gaston, and here all of Cleveland. Do you think this map is wrong?

A. No, I don't. It's just that my recollection, the district had been changed.

Q. Several times?

A. Periodically.

Q. Right.

A. And in the particular two year term might be a little vague in my mind.

Q. But the change, as it relates to the 9th District, was, as before there were three counties, two of which were split in the '97 Plan. Cleveland, your county is whole; Gaston is whole and Mecklenburg is the split county; is that right?

A. Yes, sir.

Q. All right. Now, you weren't on the redistricting -- you had an interest in redistricting but you were not a member of the House Redistricting Committee?

A. I was not.

[*74] Q. That was led by Representative McMahan from Mecklenburg?

A. That's right.

Q. He's a Republican?

A. Yes.

Q. The Republicans had a slim majority in the House and had the chairs of all the committees; is that right?

A. Yes.

Q. Now, did you confer with Representative McMahan about the congressional districts being drawn in 1997?

A. I had conversations with him.

Q. And did you understand, when he was proposing the plan, that was first the plan that his committee had come forward with and then the ultimate plan, this plan that was adopted that as to the 12th District he said that the overriding motive was political, it was to preserve the six, six Democratic Republican split and, in fact, some incumbent protection. Do you recall him taking that position?

A. I'm surprised if he did say that.

Q. Well, did you take the position with him that the plan was wrong because it was race based?

A. I certainly had that opinion that it was race based, but they were under order to make it race based.

Q. Whose order was that that you are talking about?

[*75] A. Well, the Justice Department had by direct order or inference or whatever said that it had to be two minor districts.

Q. Well, but, in fact, the district that was drawn in 1997 in the 12th District was majority white, wasn't it?

A. I think by percentage it might have been.

Q. As opposed to percentage, but by people was it majority white?

A. Yes.

Q. Now, you did attend one of the public hearings that was held in this matter, did you not?

A. I'm sure I must have, if it was held in the Legislative Building particularly.

Q. Do you recall -- do you recall on February 26, 1997, that there was a public hearing in the Legislative Building where the members of the House Committee and the members of the Senate Committee were present and heard from various people, legislators, and people from the general public?

A. Yes.

Q. Do you recall talking at that public hearing?

A. I believe I made a presentation.

Q. Do you recall that you expressed some complaints regarding the -- this district that was being proposed or the two districts that were being proposed, one by the [* 76] House and one by the Senate?

A. I would suspect that I did. I'm a little vague about it at the moment.

Q. Do you recall that the complaint that you made, the criticism that you had of the plan, was because the primary

interest was being incumbency protection and protecting political party position?

A. Yes.

Q. And you said the Senate and the House Redistricting Plans are designed to protect both of those interests?

A. Yes, it was partly to protect the incumbent's interest.

Q. Well, but do you recall whether you said you made any complaint at that time that there was something wrong because it was -- there was some racial motive that was wrong and was predominated?

A. I might not have said that.

Q. Your proposed constitutional amendment did not prevail in the General Assembly, did it?

A. It did not.

Q. And you proposed a constitutional amendment because of the Constitution of North Carolina says it is the General Assembly that has the sovereign power to draw congressional districts?

A. Correct.

[*77] Q. You wanted to change that?

A. Yes.

Q. And that's a matter of political theory some states have changed?

A. About 11 or 12 have a similar plan.

Q. Right. But North Carolina has chosen to keep that power in the General Assembly and with the people, with the legislators the people have elected?

A. Yes. But my plan was to serve the people, not the political parties.

Q. That was the purpose -- that was your belief as to the commission system would be better but your colleagues in the General Assembly did not agree with you?

A. Not sufficient enough to take action.

* * *

[*77] *Redirect Examination*

By Mr. Everett:

Q. In giving your opinion as to the predominate motive, have you taken into consideration the conversations you had with Representative McMahan?

A. State the question?

Q. In giving your opinion earlier as to the predominate motive being racial, did you take into account, among [*78] other things, your conversations with Representative McMahan?

A. I had a conversation with him. He might not have specifically said that, but certainly the impression would have been that's what they were arriving at.

Mr. Stein: Objection. Motion to strike.

Judge Thornburg: Motion to strike allowed.

By Mr. Everett:

Q. In any event, your opinion took into account recollections, contacts in the General Assembly at that time; would that be true?

Mr. Stein: Objection.

Judge Thornburg: Overruled.

A. The prevailing atmosphere and environment was what they were coming up the the racial gerrymandering district --

Mr. Stein: Objection.
Judge Thornburg: Overruled.

[*81] Q. So there's no confusion about it, since we have the same initials, can you explain what relationship, if any, you are to me?
A. Yes, sir, I can. My father and your father were brothers. And before your mother married your father, I came along and my daddy named me for your father. So that's the reason you are not a junior.

* * *

[*82] Q. Now, moving forward to 1997, could you state whether or not your county or city was split in any way?
A. Yes, sir. The county and city both were split [*83] significantly, in my opinion, and very radically to pick up much of the African American community.
Q. Were you familiar with the general dispersion, if any, of African Americans in Rowan County?
A. Yes, sir, to some extent.
Q. State whether or not they tend to be concentrated in any particular locations in the county. And if so, where?
A. Yes, sir, they do. They are basically concentrated in a town we call East Spencer and in the area I refer to as Jersey City. But it's in the White Packing Company area there and in the Livingstone College area.
Q. Now, in connection with this case and after -- well, first, did you become a plaintiff in this case at some point?
A. Yes, sir, I did. In that I had followed your activities in the 1992 case and, in fact, dropped you a line, sent you some

clippings at that point and have followed it generally as you progressed through it. You and I, in a telephone conversation a time or two, had talked about Rowan County and I was glad to serve as a plaintiff on that basis.

Q. Now, as a result of participating in this lawsuit or maybe even before participating, did you have occasion to go to the Board of Elections and try to determine what the breakdown was in Rowan County?

[*84] A. Yes, sir. I wanted to be sure what I was getting into when I became a plaintiff in this case, particularly as far as Rowan County and its division was concerned. I went to the Rowan County Board of Elections and they were kind enough to furnish me a precinct map of both Rowan County and Salisbury. They had a list of precincts there, all the precincts in the county and their designation as far as District 12 and District 6 are concerned.

I obtained maps from them. With their help I colored them in and they are on the table over there as to the portions of the 12th District and their boundaries and the Sixth District and its boundaries.

Q Now, were you deposed in connection with this case several weeks ago?

A. Yes, sir.

Q. And did you present these particular exhibits, these maps you had drawn at that time. Were you asked questions about them?

A. I was asked questions about them, sir. I was somewhat surprised they got into the deposition, but that was fine with me.

Q. All right, sir. Now, with respect to these maps, since there is some question, I think the defendants have objected on grounds of authenticity?

A. Yes, sir.

[*85] Q. These are Deposition Exhibits 60 and 61. Who prepared these?

A. I did.

Q. I'm going to ask you to hold these up and these are Deposition Exhibits 60 and 61. And why don't you hold them up and you can indicate -- take 60 first and indicate what that is.

A. This, Your Honor, is --

Q. Wait a second for the Court to get theirs.

A. Excuse me.

Q. Tell us what 60 is and what it represents and then do the same with 61.

A. 60 is a map of Salisbury area that was divided according to District 12 and District 6. District 12 is in yellow. The East Spencer area I referred to predominately African American is Precinct 18, this is numbered by precinct. The Livingstone College and Jersey City area are represented by Precinct 42 and 35, I believe, if I'm reading this correctly. Those are the concentration of black voters.

Q. By the way, you mentioned Livingstone College?

A. Yes.

Q. I'm going to interrupt you for just a moment. Do you have any particular relationship to Livingstone College?

A. Not now. I have had in the past. I was privileged **[*86]** to receive an honorary doctorate degree from Livingstone College. I worked with the college on a number of occasions,

particularly when I was with the bank. I headed the local -- as Treasurer of the local United Negro College Fund and was an Associate Trustee of Livingstone for a while.

Q. Okay. Continue, I'm sorry.

A. That's all right. The 12th District comes in from the northeast through Spencer, picks up the heart of Salisbury and moves out of the county towards Iredell County.

If I may have the other map.

Q. Number 61?

A. This is 61. The Salisbury map fits in the area here. It was too detailed to go into the full county map of Rowan. So that this represents the county as the yellow portion is District 12. The purple portion here is District 6. They are two split districts, according to our Rowan County Board of Elections and one of those --

Q. You said district. Is it precinct?

A. Misspoke. I apologize. There are two split precincts, one in East Spencer and one in the southwestern side of Salisbury where District 6 encroaches into the precinct themselves, so that this is the northern portion of Rowan County is District 12 designation.

[*87] If you will notice on the map to the right Westward 2 looks as if it's split and the Millford Hills District -- looks as if the East Spencer District 12 and 6 is split and Southward 12 and 6 is split according to the map. And this is the one I obtained from the Rowan County Board of Elections.

Mr. Everett: Your Honors, we'd like to offer these into evidence over the defendants' objection of authenticity. We believe we demonstrated these are authentic.

Judge Thornburg: We'll admit it for illustrative purposes.

Mr. Everett: There's another exhibit, 62.

Judge Voorhees: Did you offer 60 and 61?

Mr. Everett: Yes, sir, Exhibits 60 and 61.

Judge Thornburg: Same ruling.

By Mr. Everett:

Q. I'm going to show you Exhibit 62 now and can you indicate if you know what that is?

A. This is a list of the precincts in Rowan County and, how shall I say, district allocation for congressional district for the Senatorial district and House district, North Carolina Senate and, of course, the North Carolina House. And they show here as well that East Spencer is split between District 12 and District 6 and Southward is **[*88]** split between District 12 and District 6 and that was the purpose of getting that.

Mr. Everett: We would also like to offer that into evidence, Your Honor.

Judge Thornburg: Let it be received.

By Mr. Everett:

Q. Mr. Everett, I'm going to show you Exhibit 106, and this is a map showing racial distribution allocation. Can you state from your knowledge of Rowan County and including what you have done in terms of checking, whether the percentages in terms of racial concentrations, as shown for Rowan County here, corresponds with that which you have observed?

A. The Rowan County has -- had the predominately black areas allocated to the 12th District. East Spencer, East Ward,

I believe it's South Ward, West Ward, those are predominately black and predominately Democratic and vote that way.

Q. All right. Now, let me next ask you whether, from your knowledge of Rowan County and Salisbury and the knowledge of racial concentrations or dispersions in that county, whether you were -- whether you formed an opinion as to the predominate motive of the General Assembly in providing Rowan County as it did in creating the 12th District in the 1997 Plan?

[*89] A. In the 1997 Plan, it's my --

Ms. Harrell: Objection to any opinion that he would express on that subject. The witness has not testified to anything that would allow him to testify to his opinion about the motive of General Assembly.

Judge Thornburg: We'll sustain that objection at this point, Mr. Everett.

By Mr. Everett:

Q. Mr. Everett, in connection with this plan, could you state whether you see any way in which the 12th District in Rowan County corresponds to the racial concentrations that you just identified in Rowan County?

A. Yes, it does. And there's a very classic example in the East Spencer Precinct that was split. It was split near Boundary Street and on the north side is most solidly black and on the south side very few white families live there. So it's evident to me, on its face, that this is racially gerrymandering.

Judge Boyle: You have it African American on both sides of the boundary, the way you testified?

The Witness: I apologize. It's African American on the north side of Boundary Street and south side is predominately white on the East Spencer Precinct.

Judge Boyle: That's the same thing you said a minute ago. I may be misunderstanding. Before you said **[*90]** there were few, if any, whites south, okay.

The Witness: There were a very few whites south of Boundary Street.

Judge Boyle: If it's black on the north and no whites on the south --

The Witness: It's predominately black.

Judge Boyle: -- on both sides. If it's black on the north and there are no whites on the south, then it would -- do you get it?

The Witness: Well, I may be missing something, sir, but in my opinion it went down Boundary Street to eliminate the few whites.

Judge Boyle: Just the way you said it.

The Witness: I apologize. Sorry, your honor.

Judge Boyle: If it's black to the north and no whites to the south, isn't it black to the south also?

The Witness: I apologize, your honor. I may have misspoken. What I'm trying to say is to the north side of Boundary Street is predominately black, to the south side of Boundary street is predominately white. I apologize.

Judge Boyle: Okay.

By Mr. Everett:

Q. Are both of them about equal in terms of concentration of people?

[*91]A. No, sir. The East Spencer Precinct has, I think, about five white families in it on the south side of Boundary Street.

Q. How many African American families?

A. I don't think there are any.

Q. So there are only about five families altogether on the south side?

A. In the entire precinct, yes, sir.

Judge Boyle: Then you were right.

* * *

[*95] Q. All right. With regard to the precinct of Salisbury in the 12th District in the '97 plan, what is the name of your precinct or the number?

A. The name of my precinct?

Q. The name or number it goes by.

A. North Ward 2. I have to look up the number to be sure. It's precinct number 40.

Q. Is that precinct majority white or African American or something else?

A. It's majority white.

Q. And does it also tend to vote Republican?

A. Yes, ma'am.

Q. And it has -- to your memory it has a majority Democratic in registration; is that right?

A. As best I remember, the registration, based on recent political campaigns, has shifted a good bit. My memory tells me, from past history, it's basically been Democratic.

Q. All right. But the voting is no longer Democratic?

A. The voting is Republican. The registration was Democratic.

Q. When you did these maps that you testified about, [*96] when did you visit the Board of Elections to get the information you needed?

A. Ms. Harrell, it was back at the time I agreed to become a plaintiff in this suit. I wanted to be as sure as I could of where I am and what I was participating in as far as the suit is concerned.

Q. And you became a plaintiff in 1997; isn't that correct?

A. Somewhere along in there, yes, ma'am.

Q. And at the time, I believe you didn't volunteer, but your cousin Robinson Everett called you and said he needed a plaintiff, asked you to be a plaintiff?

A. I didn't call him and ask him to let me join. We were in conversation. I agreed to join and was glad to be a part of it, yes, ma'am.

Q. But -- and when you got these maps about that time or when you got the list and map and you called him about that time, so far as your precinct's shown on there, the precincts are as they existed in 1997; is that right?

A. According to the County Board of Elections.

Q. You don't have any information as to how the precinct lines changed since 1990, do you?

A. No, ma'am.

Q. So if any -- whatever it shows as to whether a precinct is split or not may or may not have been true [*97] under the 1990 precincts, so far as you know?

A. As far as I know, the precinct splits are shown on the 1997 Plan and this is furnished by the Rowan County Board of Election.

Q. You have no knowledge as to the same with the 1990?

A. No, ma'am.

Q. With regard to that list that you had of those precincts that showed some splits, did the list also show splits for State House and Senate districts?

A. Yes, ma'am.

Q. And were there, in fact, several splits for State House and Senate districts for some precincts?

A. State House one, Senate district, two splits.

Q. In fact, one of the precincts was split from both the Senate and State House?

A. Yes, ma'am.

J. H. FROELICH TRIAL TESTIMONY (EXCERPTS)

[*101] Q. Please state your name, residence and occupation.

A. J. H. Froelich, Jr., go by Jake. I'm from High Point, North Carolina. I am in the movie production business, the hotel business and recently have been consulting in the businesses that we have just sold, which are furniture market show room properties; also in the furniture business.

Q. And how long have you lived in High Point?

A. All of my life.

Q. Could you state your education?

A. I went to the High Point City schools and then went to Weeberry (phonetic) Forest School in Orange, Virginia; went to the University of North Carolina in Chapel Hill, graduated. Was in the first MBA class in Chapel Hill; got my Master in Business.

Q. Could you state what activities you engaged in in the electoral or political process over the years?

A. I have been involved in the political life of our state and our region for a long time. I have been a precinct -- elected precinct official, county Democratic party chairman. I have ran the campaign for Governor of Hargrove Bowles, Jr. In the '70's. I have been involved **[*102]** in our region and state in political life for most of my career.

Q. Okay. And as a result of that, have you become acquainted with the precincts in your home county of Guilford County?

A. Yes, I know the precincts, some of the make up. I know sometimes I have gone door to door in times past in the '50s. I haven't done that in recent times.

Q. Have you become familiar with precincts in other counties in the Piedmont?

A. I sort of understand how they are organized and what goes on.

Q. Mr. Froehlich, could you state whether or not in 1992 you were first placed in the 12th District?

A. I was in the 12th District because our residence moved slightly before that. We built a triple mixed use property in High Point, which had condominiums on the top three floors, showrooms on the bottom floor, and offices on the middle floor. I moved into what I discovered was that precinct having been in the 6th District all of my previous life.

Q. And then in 1997 were you still in the 12th District?

A. I was. That's the one that was thrown out.

Q. That's right.

A. It was and I'm not anymore. I'm back in the 6th.

[*103] Q. So in the 1997 Plan, which is the one now being litigated, which was never put into effect, you were, in fact, in the 12th District?

A. Yes.

Q. Now, at that time did you -- when you saw the 1997 Plan, did you look carefully at the precincts to see how the district was formed?

A. Yes. And that district was formed by putting predominately black precincts in the High Point portion of that congressional district.

Q. Were you here during Mr. Woods' testimony?

A. Yes, I was.

Q. He's also from High Point?

A. Yes, sir.

Q. You heard him describe the precinct allocation there in Guilford County?

A. Yes, I did.

Q. Was that what you also observed?

A. I observed, yes.

* * *

[*106] Q In terms of the 12th District, could you determine what would be the likelihood, from your knowledge of the political process and electoral process of the 12th District is constituted in 1997 Plan, would elect an African American as a candidate or nominate an African American as a candidate?

A. It would seem highly unlikely, yes, sir.

Q. And what about with respect to the opportunity of a **[*107]** white Democratic candidate in the primary? How would you -- what would be your opinion as to the likelihood of success?

Ms. Harrell: Objection.

Judge Thornburg: Overruled. You may answer.

A. The chance of a white candidate in a primary would be very, very difficult for that person to be nominated.

* * *

Q. Mr. Froehlich, just a couple of questions. With regard to your business background, did you mention you're in television or radio?

A. I have an interest in -- I have had television interest, yes, ma'am. I do currently. I have an interest in the Wilmington TV.

Q. With regard to your participation in television industry, have you been in business with Counsel Robinson Everett for a number of years?

A. Yes, I have.

Q. Does that date back to the '70's, I believe?

A. We had an interest in a venture in Greensboro.

* * *

[*108] Q.One final question: you were asked about a relationship with me. Why did you join this lawsuit; why are you a plaintiff?

A.Because I'm interested in what happens in our State. I have been interested in the political life of our State and I was absolutely very, very disappointed that we ever came to a congressional redistricting plan that was race based.

NEIL CARSON WILLIAMS TRIAL TESTIMONY(EXCERPTS)

[*109] *Neil Williams*, being first duly sworn, testified as follows during *direct examination*:

By Mr. McGee:

Q. Hello, Mr. Williams. State your name full for the Court.

A. Neil Carson Williams.

Q. And where do you currently reside?

A. 1912 Shoreham Drive, Charlotte.

Q. And approximately how long have you lived in Mecklenburg County?

A. 30 years.

Q. What is your occupation?

A. I'm an attorney.

Q. And what firm do you work with?

A. Horack, Talley, Pharr & Lowndes.

[*110] Q. As part of your practice, have you had any experience in voting rights cases?

A. A limited amount, yes.

Q. Okay. What is your political party?

A. Republican.

Q. And do you regularly follow the political process in Mecklenburg County?

A. Yes, I try to.

Q. And throughout the state as well?

A. To some extent, lesser extent, but yes.

Q. What elective offices have you held in the past?

A. I was elected to the Charlotte City Council, Council in 1973 and reelected in 1975.

Q. Have you ever run for Congress?

A. Yes, I was a candidate for Congress in the 9th Congressional District in 1994.

Q. And as a result of your involvement in the political process and also considered in being a candidate in '94, are you familiar with the precincts in Mecklenburg County?

A. Yes.

Q. Are you generally familiar with other precincts in the Piedmont area that follow along within the 12th District?

A. To a lesser extent, yes. More so the 12th District as we voted in the last time in 1998.

[*111] Q. Are you generally familiar with District 12 as it was constituted in 1992, the district that ran from Gastonia up through Durham?

A. Yes, that's the way I described it, Durham, Greensboro, Winston-Salem, Charlotte, Gastonia district.

Q. With regard to the District 12, the 1997 Plan the Greensboro, Winston-Salem, Charlotte plan, are you generally familiar with that plan?

A. Generally.

Mr. McGee: If I may approach and use a map.

Q. Showing you Exhibit 106. Are you familiar with this particular map? With the Court's permission, if you'd like to step down to examine it closer.

(Witness leaves the witness stand.)

A. All right.

Q. This is -- I show a map that shows the 1997 Plan as you refer to it in the Mecklenburg, Guilford --

(Witness returns to the witness stand.)

Winston-Salem district. To what extent did the allocation of precincts in District 12 within Mecklenburg County correspond with the concentrations of minor persons in those precincts?

Mr. Stein: Objection.

Judge Thornburg: Ask that again.

Q. To what degree did the inclusion of precincts in [*112] Mecklenburg County districts precincts included in District 12 correspond with the racial breakdown in the precincts?

Mr. Stein: Objection.

Judge Thornburg: Overruled.

A. All of the predominately black precincts were included in the 12th District.

Q. As it was configured in '97?

A. Yes.

Q. In Mecklenburg County, what two Congressional Districts are included in the 1997 Plan?

A. Part of the county is in the 9th District and part is in the 12th District.

Q. And have you formed an opinion as to whether the county was divided along racial lines when those districts were configured?

Mr. Stein: Objection.

Judge Thornburg: Overruled.

A. Yes.

Q. And what is that opinion?

A. That --

Mr. Stein: Objection.

A. That it was so divided with the intent to elect --

Mr. Stein: Objection.

Judge Thornburg: Sustained as to intent. I'll [*113] let him testify as to just what he said, that it's racially divided.

Q. Divided such that the majority minor precincts placed in the 12th District and white predominately white placed in the 9th District?

Mr. Stein: Objection to leading.

Judge Thornburg: Overruled.

Q. In what way, if any, is the western part linked to the eastern part in Mecklenburg County?

A. There's a slight land bridge at the southern part of the county.

Q. Based on your observation of the precincts and as well as your participation in the political process, do you have an opinion, based on the circumstantial evidence from the shape and demographics of the district, if race was a predominate motive in the creation of District 12 in Mecklenburg County?

Mr. Stein: Objection.

Judge Thornburg: Sustained.

Q. Are you aware that the defendants have claimed in this case that District 12 in the 1997 Plan is a Democratic island in a Republican city?

A. I heard that yesterday.

Q. What is your opinion, if any, as to the accuracy of that claim?

[*114] A. I don't think that's correct.

Q. In your opinion, is it possible to draw a Democratic district both in terms of registration and performance in the same general area of the state that encompasses District 12 that is less bizarrely shaped?

Mr. Stein: Objection.

Judge Thornburg: State that question again.

Q. In your opinion, is it possible to draw a Democratic district in the same general area of the state that is less bizarrely shaped than District 12 in the 1997 Plan?

Mr. Stein: Objection.

Judge Thornburg: Sustained.

Q. Let me ask you, then: why do you not think that -- why do you disagree that it's a Democratic island in a Republican city?

A. Because there are precincts nearby that are also Democratic leaning precincts and, as a matter of fact, my understanding is some of those precincts were included in the successor plan to the one we're talking about today. That plan I call the Winston-Salem Charlotte plan.

Q. Which would be, I think, the '98 Plan?

A. '98 Plan, the one we just voted under last Congressional election.

* * *

[*116] *Cross-Examination*

By Mr. Stein:

Q. Mr. Williams, I'm on the Board. Here is a map that shows the 1997 Plan that was under litigation showing the 12th district in yellow and the 9th District in green. You've seen that?

A. Yes.

Q. And the 9th District in this plan has two whole counties, Cleveland and Gaston, that run along the southern border of North Carolina and part of Mecklenburg County; is that right?

A. That's right.

Q. When you ran in 1994 you were running in the Republican Primary against an incumbent; were you not?

A. No.

Q. That was the time when Representative Myrick was first elected?

A. That's right.

Q. And at that time, what were the counties that were included in the 9th District?

A. Mecklenburg looked very much the same, but there was only -- that county looks the same. Most of Gaston County was also in the 9th District and a little portion of Cleveland County.

[*117]Q. Let me show you the map that we have been using here showing the 1992 Congressional Plan. It shows all of Gaston; does it not?

A. That would be wrong.

Q. Because it goes into Gastonia, so that there was a portion of three counties in the 9th district at that time?

A. That's right.

Q. And then the map drawers determined for the 1997 Plan to have two whole counties and parts of Mecklenburg; is that right?

A. That's right.

Q. If they made a decision to include all of Cleveland and all of Gaston, that would then, for the 9th district, would determine how much of Mecklenburg, how many people in Mecklenburg would be in the 12th. First of all, you'd have to determine how many people you would need to get out of Mecklenburg to make a complete congressional district with a

district that included all of Gaston and all of Cleveland; isn't that right, for one-person, one-vote purposes?

A. I'm not quite following you.

Judge Boyle: He means the last particular figure is Mecklenburg County. The constant figure would be Gaston and Cleveland. If you decided on those two, the **[*118]** only choice you have is to make up the difference from the one you are making to make elastic or expandable. You follow me?

The Witness: If you add voters in Cleveland County?

Judge Boyle: No. If you take two as constant, you have to, by definition, make the third flexible or elastic. We understand.

Mr. Stein: All right, sir.

By Mr. Stein:

Q. So that the choices you then have in Mecklenburg, if that's what happened, would be if you are choosing one precinct then you would have to exclude another precinct or precincts. It's kind of like the way they have the budget bill now. You have to pay for what you had. If you are drawing precincts in Mecklenburg, if you are including precincts in Mecklenburg -- I withdraw that, that was the worst question I ever heard.

Isn't it so, that in terms of whether you are making a decision about a particular precinct, if you include that precinct you necessarily then are making a choice between that precinct and another precinct or other precincts?

A. Correct. I don't think Mecklenburg changed very much.

[*119]Q. Well, you will agree that the record is just going by appearances. Does Mecklenburg look any different?

A. Of course not.

* * *

[*121]*Redirect Examination*

By Mr. McGee:

Q. You stated there are 26 minor -- 26 precincts in which African Americans make up the majority in Mecklenburg County; is that correct?

A. Right.

Q. Of those 26, how many are in District 12?

A. All of them.

Mr. McGee: no further questions.

DAN FREY TRIAL TESTIMONY (EXCERPTS)

[*121] Mr. Markham: The plaintiffs call *Dan Frey*.

Dan Frey, being first duly sworn, testified as follows during *direct examination*:

By Mr. Markham:

Q. Mr. Frey, state your name, please.

A. Dan Frey.

Q. And can you tell us who's your employer?

A. My employer is the North Carolina General Assembly.

Q. What's your position?

[*122] A. I work in the information systems division. I work specifically with the computer systems for redistricting and geographic information systems in general.

Q. How long have you held that position?

A. Since August of 1995.

Q. Are you here today pursuant to a subpoena?

A. Yes.

Q. And did you know before that you were going to be testifying today?

A. No.

Q. Let me ask you a few questions. Have you brought along with you some data concerning persons who were moved from various districts in the course of constructing the 199 Congressional District Plan?

A. Yes.

Q. Have you calculated from that data, which is in the province of your department, what is the percentage of African Americans who reside in District 12 in the 1997 Plan who were also included in District 12 in the 1992 Plan?

A. Yeah, as far as -- yeah, that basically for black and white population.

Q. Tell us what that number is for African Americans

A. The number is 232,324.

Q. Can you tell us what percentage that is of those **[*123]** African Americans included in District 12 in the '92 Plan?

A. So based on the 1997 Plan, the people in there, the African American population, 90.2 percent of that African American population was also in the 1992, 12th District.

Q. Can you give us a similar number or the comparable number for what percentage of whites who reside in the District 12 in the 1997 Plan were also included in District 12 in the 1992 Plan?

A. That would be -- yeah, a total of 139,044 people and that's 48.8 percent of the total 1997 District 12 white population.

* * *

[*139] *Cross-Examination*

By Ms. Smiley:

Q. Mr. Frey, I thought you were going to be called only about one issue. I'm happy to have you there to talk about maps.

You were asked about percentage of African Americans moved in who were not moved out of the 199 -- not moved out of District 12 in 1997, as I recall. You gave a percentage. Do you know the memory -- or can I refresh **[*140]** your memory what the formula being used to create that percentage is?

A. Might I draw an illustration to explain?

Q. Yeah.

A. Explain how that is.

Q. Yes.

A. Is there something I can use to draw?

(Witness leaves the witness stand.)

There's been some confusion over this because it's a little bit confusing the way it can be worded, but I was just drawing this up earlier, my understanding of it.

Q. While you are drawing this, tell the Court whether or not this is your formula.

A. Yeah, it's my formula.

Q. Okay.

A. Okay. So this would illustrate the difference in black population between the '92, 12th District and the '97, 12th District. Since the percentage of African Americans was a lot higher in the 1992 Plan, the total numbers were higher. It was 312,791 and then the total in 1992 was 257,

Judge Boyle: '97 you mean?

A. Or '97, excuse me. 257,644. And the question that came up --

Q. Who raised this question?

[*141] A. Marty McGee.

Q. Who's plaintiffs' counsel?

A. Yes. Was how this population had moved -- sort of what percentage of the population had stayed in the same -- remained in the 12th District and what percentage of the population had moved when the new -- when the '97, 12th was drawn. So, basically, we had 232,324 African Americans that were in the '92, 12th that remained in the '97, 12th. So if you

look at it from the perspective of the 1992 Plan, that's 74.3 percent of the African American population that was in the 1992 Plan also was in the '97 Plan. But if you look at it the other way, you can say that, you know, still you have the same number, 232,324 in the '97 Plan, you can say that 90.2 percent of the African American population in the 97 District 12 was also in the '92 District 12.

Judge Boyle: But it's totally irrelevant. It wouldn't matter if everybody got up and moved and an equal number moved in if you are looking at the racial composition is you don't care who the particular individual is.

The Witness: Yeah. And I don't know that was the question.

Judge Boyle: What was the point of that analysis?

[*142] Ms. Smiley: I believe it's still my cross.

Judge Voorhees: The Court asked a question. If you have an answer, go ahead.

Mr. Markham: I believe it illustrates the main substance of a racial core in the creation of a new district 90 percent of the black persons in the '97 district were also there in '92. Only 49 percent of white persons who were in the district remained there. I think it indicates a racial motive in the sense of maintaining the core. That's the purpose we offer it.

DR. RONALD E. WEBER TRIAL TESTIMONY (EXCERPTS)

[*143] Mr. Markham: Our next witness is Dr. Ron Weber.

Ronald E. Weber, being first duly sworn, testified as follows during *Direct Examination*:

By Mr. Markham:

[*144] Q. Dr. Weber, state your full name for the record, please.

A. Ronald E. Weber.

Q. And can you identify for us Exhibit 48 in the deposition exhibits?

A. Yes, that's Exhibit A to my declaration, which includes my curriculum vitae.

Q. That's a reasonably current listing of your consulting and writings and other educational data with respect to your service in political science?

A. Yes, sir.

Q. Where do you teach today?

A. Teach at the University of Wisconsin, Milwaukee.

Q. What subject?

A. Political science, particularly state politics, political behavior and methodology.

Q. In the course of your -- over the last several years, have you had an opportunity to evaluate a number of redistricting plans in the context of *Shaw* lawsuits?

A. Yes, sir.

Q. And can you tell us in which cases you have offered opinions and done analysis with respect to issues regarding whether a significant number of persons were placed inside or outside of the district on the basis of race?

[*145] A. Yes, sir. I was an expert in *Hayes versus State of Louisiana* in Louisiana, of course. In *Vera versus Richards* in Texas. *Miller versus Johnson* in Georgia. Expert by deposition here in North Carolina in *Shaw versus Hunt*. Expert in legislative case in Texas, *Thomas versus Bush*. Expert in *Johnson versus Mortimer*, District of Florida challenging the Third District. *Moon versus Meadows* in Virginia. *Chen versus City of Houston*, local city counsel case in Houston. I think that enumerates the cases.

Q. In addition to those cases, have you also consulted and given advice as well as testimony regarding Section 2 and Section 5 issues for government's and groups?

A. Government's and groups, yes.

Q. Can you identify Exhibit 49 for us?

A. Yes. Exhibit 49 is an exhibit that I prepared routinely to do with my reports or declarations in which I list all the cases in which I have been deposed or served as a trial expert.

Q. And can you identify for us Exhibit 47?

A. Exhibit 47 is my declaration of September 10, 1999, for this case.

Q. I want to go through with you a number of the tables that are presented in that declaration. The First Table is located at page 13 and 14 with regard to split [*146] counties. Can you tell us what value or assistance that table offers to the Court in evaluating issues that relate to this case?

A. That simply enumerates for the challenged plan each of the counties by district that are split on the basis of population and so what this indicates, for example, is that there are on page 13, there are a total of, I believe, ten counties in the First District that are split. Going all the way through on page 14 a

total of six out of six counties in District 12 are split.

Q. Table Two appears at page 19 of that report. What information does that table provide to assist the Court with issues that relate to this case?

A. This table, Table Two, includes the same information as in Table One, but this time it is arranged by counties. So an array can see for any particular county the racial differences between the portion assigned to one district and to another district.

For example, if we look down the table at Forsyth County, the portion that is assigned to the 5th District is only 11.1 percent African American whereas the apportion assigned to the 12th District is 72.9 percent African American. So clearly states the differences between the racial, the composition of the two districts as the county has been split and that goes throughout the [*147] table, whether it's a split involving the 1st or 12th District or the six counties that are neither involved in the First or 12th District.

Q. I'd like to draw your attention to Defendant's Exhibit 435. -- I'm sorry. I misspoke, 433.

Can you tell us what information that exhibit presents?

A. I understand that Exhibit 433 has been prepared by, I believe, Dr. Peterson for the defendants and it's an attempt to do --.

Ms. Smiley: I object, Your Honor. This is defendant's exhibit and this witness is saying what he thinks it is and what it's attempting to show.

Judge Thornburg: Sustained. I'll let him tell what it shows to him but not what he thinks about Dr. Peterson's work.

Ms. Smiley: Thank you, Your Honor.

By Mr. Markham:

Q. What does this show?

A. This is an exhibit that shows the differences between the Democratic percentage assigned in the split counties based on the four criteria of partisanship offered by the defendants. And what it shows is that the difference between the Democratic proportion of each of the counties splitting, they are split within the 12th District, is **[*148]** less than the racial differences. If you look at the racial differences in my Table Two versus the partisan differences in this Exhibit 433, the racial differences are always greater than the partisan differences.

Q. Now, returning to your report to Table Three on page 24. What information does this table provide?

A. Table Three provides information as to each of the municipalities or census designated places that have been split in the drawing, again, of the 1997 Plan under challenge here. And in Table 3, again list by the jurisdictions within each of the districts. So you have, at the top of the table, you have all the jurisdictions that are split within District 1, numbers 13 total jurisdictions that are split and then it goes all the way through all the districts and concludes with the number of communities that are split in District 12, which numbers, I believe, 13 separate jurisdictions that are split in Table 12 to create, again, not Table 12 but Table Three for District 12. The jurisdictions that are split between District 12 and another district.

Q. Okay. Again, is Table Four at page 27 a different way of presenting these same data?

A. Yes, it is. But it's a way in which you can very easily see the racial differences in the communities that are split to draw the various proposals. For example, if **[*149]** you look at

top of page 28 and in the Greensboro split, the portion that's in District 6 is 10.7 percent African American, but the portion assigned to District 12 is 55.6 percent African American, again, focusing on Forsyth County. Bottom of page 29 there you show 16.1 percent is the African American portion assigned to District Five, but 77.4 percent is the African American portion district assigned to District 12. Again, you can see the racial differences as the communities are being split between the districts.

Q. And is exhibit -- Defendant's Exhibit 434 analogous information with respect to the political division of cities?

A. Yes, it is.

Q. How do those two contrast, Table Four of your report and Exhibit 434 of the defendant's exhibits?

A. Again, in looking at the communities in Table Four, I believe in all but one case the racial differences is greater than the political difference in Exhibit 434.

Q. And have you prepared an exhibit which summarizes this information concerning the political data in the divisions of cities?

A. Yes, I have.

Q. Which exhibit number is that? Is it Exhibit 309? I believe that's the one my information shows.

[*150] A. Yes, it's Exhibit 309.

Q. And can you explain for us what that information indicates?

A. Well, the theory underlying the preparation of this exhibit would be if one were to assume that precincts were going to be randomly assigned within the six counties involving District 12, you might have about 36 percent of all

the precincts would be assigned to District 12 and what it shows is that almost all of the precincts that are over 40 percent African American, I think it's all but three are assigned to District 12, but on the political data nowhere is the number in the same range as is the case with the racial data.

Q. Next I want to turn to your Table Five. I believe it appears after page 32 of the text?

A. Yes, sir.

Q. What does this data show regarding the assignment of precincts in Congressional District 12 in the 1997 Plan?

A. This table has a page or more for each of the counties that are split between the congressional districts, and so it has counties from split with District 12, with District 1 and with six other counties as well. But, for example, if we look at one of the counties that is assigned to District 12 and perhaps say District 5, I'm going to page through to the Forsyth County table, this [*151] should be about, I believe it's the eighth page of the tables.

The way I have organized the tables is to list every precinct in the county and to list for it the total population; the white population, the black population, the total VAP, the white VAP and black VAP and the percentage of each of those figures.

Also, in the very far right-hand corner to indicate the district to which it was assigned in the challenged plan of 1997. What you would expect to see if there's a pattern of racial assignment because the districts -- excuse me, the precincts are ranked from the highest African American percentage in the precinct to the lowest in the precinct, you would find the precincts assigned to District 12 would be at the top of the

table. So as you can see in this particular table, every precinct that is majority African American beginning with the eastern elementary school precincts and working up the table has been assigned to District 12. And then you go down and you find a few other assigned to District 12. But you go to the second page of the table, which has the very light majority precincts in Forsyth County. You notice none of them are assigned to District 12 at all, they are assigned to District 5.

So with this information you can very clearly see a [*152] pattern of assignment at the precinct level which, in my judgment, is a racial assignment that is being made or has been made by the state.

Q. Okay. Let's continue. Your text table, Table Six, appears, I believe, after the text on page 55 at page 56?

A. Yes, sir. Table 6 is a table constructed to examine the proposition proffered by the defendants that what really is involved here is assignment of precinct on the basis of partisanship rather than on the basis of race. So I have a series of tables labeled as Table 6 that array each of the six counties in District 12 as well as a table at the end in which I report all the data for six counties in District 12 in which I array the partisanship measure against the racial measure.

For example, again, if we were to look at the Forsyth County table, which begins on table on page 58, Forsyth County table if you look in the far right-hand column and bottom of each table, of course the precincts that are 70 percent African American and 70 percent Democratic are clearly assigned to the 12th District. So in this case, it's 13 of 13 precincts that have that racial composition and also that Democratic composition.

Then you start reading up the table and you begin to see at what point there's no longer the assignment of precincts to District 12. And if, again, as I suggest in [*153] the text of my report, if the inference is it's party that is driving the assignment pattern rather than race, you would find that even in the precincts that are less than 30 percent African American, you would have assignment of Democratic precincts.

For example, if we look at page 58, look at not the Democratic registration figures because the Democratic registration figures are somewhat inflated, if we look at the 1990 Senate race between Harvey Gantt and Senator Helms, we begin to see at the level of less than 30 percent. There's not a single precinct that is less than 30 percent black, but yet supported Mr. Gantt in that Senate race that are assigned to District 12. So the inference here is that if we were following partisanship, some of those precincts would be assigned and you have much more random person pattern in the table of assignment. You see a clear pattern of assignment on the basis of race rather than party.

If you look at the summary table, which begins on page 68 and 69, which has the data for all the counties and, again, you look at the 30 percent line and, again, we look at the Harvey Gantt versus Helms race on page 68, there we see that there's a total of -- let me see if I can do my math correctly in my head -- 74 precincts less than 30 percent African American, but they all went for [*154] Mr. Gantt in the Senate race. But only 19 of those 74 are assigned to District 12. Remainder are assigned to other districts adjacent to District 12. I think that pretty well debunks the theory it's partisanship not race driving the assignment pattern of these precincts.

* * *

[*158] Q. What are the results of these analysis results reported?

A. The analyses are reported in Table 7 on page 80 of my declaration.

Q. What does that table provide in the way of [*159] information concerning the nature of participation rates in North Carolina?

A. In the Democratic primary, in the First Congressional District and the 12th Congressional District as well, I believe in all but one occurrence African Americans participated higher rates than non-African Americans in the Democratic primary. That's in Table Seven.

Q. What's Table Eight reflect?

A. That reflects the participation rates in the general elections. Again, held within the boundaries of District 11 or held within the boundaries of District 12 under challenge in this case. In there the analysis indicate that white or non-African American voters generally vote at higher rates than African Americans in the general election.

Q. What further analysis did you conduct concerning these election related issues?

A. Well, finally -- not finally but the second step was to estimate the white cross-over rates in these congressional districts using in particular, as I report in Table Nine on page 84, the general election returns because, again, as I've demonstrated in Table Eight, if African American voters are slightly disadvantaged in participation rates in the general election, then in order for African American candidates of choice to win, they [*160] have to get some degree of white

cross-over vote in these general elections in order to prevail.

What I show, and I think this has to do with the broader question about narrow tailoring, is that for the First Congressional District the worse case scenario was in 1990 when Harvey Gantt got 18 percent of the white vote in the boundaries of the challenged 1997 First Congressional District and it ranges all the way up to 46.2 percent where Mr. Campbell, the State Auditor candidate, did that well in that particular contest.

In the boundaries of the challenged 12th District, the ranges are much narrower, 35.1 percent at the low point for Mr. Gantt in 1996 running for the second time against Mr. Helms to a high of 41.8 percent that Mr. Edwards got in 1998.

* * *

[*161]Q. I'd like to focus on the electoral safeness of Congressional District 12. Where's the data reflected that indicates the results of your analysis concerning the electoral safeness of that district as drawn in 1997 Plan?

A. In the 1997 Plan recall, no elections were held within the boundaries of this particular congressional district. But, again, I reconstituted the state wide election returns within the precincts used in that particular plan and so those are, again, in Exhibit E, which is --

Q. Which is Exhibit 52?

[*162] A. Yes. Deposition Exhibit 52 and, here again, focusing in on the general election returns 1990 for this challenged District 12 which, of course, has never been used. It's 66.4 percent for Gantt. For the 1992 general election for

State Auditor, it's 66.8 percent for Campbell. 1996 election, Gantt for the U. S. Senate, Gantt gets 64.9 percent. General election for Auditor in '96, Campbell gets 65.5 percent and finally the 1998 general election for U. S. Senate, Mr. Edwards gets 69.3 percent. So all of these are results well over the 60 percent threshold to be deemed as a safe district and clearly there are votes being wasted in that district as it's been as it was configured in 1997.

Q. When you say "votes being wasted," what do you mean?

A. The sense is when you are doing districts and you have certain kinds of outcomes in mind and you have adjacent districts that are different in political composition, you might want to take some of the voters in the district that you are drawing that's overly safe and put them into adjacent district so as to make that district more competitive.

Judge Boyle: Like handicapping a race. You want to get your horses to the finish line ahead of all the other horses.

The Witness: Yes, constitutional but do it in a **[*163]** way you have voters not wasted.

Judge Boyle: So you are saying rather than handicapping it, they are making some sure things.

The Witness: My sense is District 12 is a sure thing. Again, in the challenged plan.

Judge Voorhees: If a legislator were being purely partisian, that legislator would want the optimum 60 percent in a particular district and save the overage to help his party in another district?

The Witness: Yes. The district that might have benefitted from that, with the hindsight from the '98 election,

would have been District Eight, in which there was an open seat and there was a seat that initially was a Democratic seat, but it turned over to be Republican.

Judge Boyle: If you add 20/20 hindsight, you wouldn't put so many voters that you were targeting in District 12. You might have thrown a few over to District Eight and won both elections rather than sacrificing District Eight and just winning District 12?

The Witness: Yes, sir, that's exactly correct.

* * *

[*164] Q. Dr. Weber, what do the data reflect concerning the electoral safeness of Congressional District 12?

A. Plaintiff's Exhibit 206.

[*165] Q. And this is the first page, the first portion?

A. The third page, first portion reports various analysis for past elections held within the boundaries of the precincts assigned to District 12. And so, for example, the first column reports the number of persons in the district. The second reports the black African American percentage in the population. The third column reports the black African American percentage of the VAP. The fourth is a Democratic performance measure, and I don't know how they calculated the Democratic performance measure, but in occasions in which I have seen this in the past, it's simply a sum, an average --

Ms. Smiley: Objection, Your Honor. Where he has seen it in the past has no relevance to this document.

Judge Thornburg: Answer the question.

Q. Will you continue with explaining the other columns?

A. I have seen this before in Texas. Texas NCEC was also advised in Texas -- advising the Texas legislature how to draw districts. I saw the performance measured there. I know it was an average there. The average other columns are that are going to follow.

The next column is the Democratic percent in 1990 of the U.S. Senate 66.6 percent. The next column is the 1996 Senate race general election, again, 64.2 percent. The next column is the 1996 Presidential race, 64.4 [*166] percent. The next column is the Democratic percentage for President in 1988, Michael Dukakis was the candidate, 66.5 percent. Next column is 1996 auditor in North Carolina, 65.2 percent. And we have 1996 House, which is a generic adding up of the election returns for all of the House raises within the precincts assigned to district, 1261.6 percent; 1994 House, 54.5 percent; 1992 Senate, 62.6 percent; 1996 Democratic registration, 61.9 percent. So the Democratic registration in this district is 61.9 percent. Then we have the 1996 black registration, 43.5 percent; 1990 black registration, 44.2 percent and then finally we have the Native American percentage, which is 0.41 percent.

Q. Let me ask you with respect to these data, did they change in any way your opinion concerning the electoral safeness of Congressional District 12?

A. No. It reinforced it. It's more data than I have. It reinforces my opinion.

* * *

[*167] Q. For the 1996 version of Congressional District 12, tell us what percentage of the district, as it's constructed, is African American for the Democratic **[*168]** primary.

A. My estimate, again, for 1996 is about 59 percent African American in the District 12 Democratic primary.

Q. Does that information allow you to make a judgment of whether the district is constructed in a way that's likely to denominate a candidate of choice of African American voters?

A. Yes, except for the possibility the African American community might be fractured or noncohesive. Assuming they are cohesive, the candidate of choice of African American voters will be nominated in both the 1st and 12th District.

* * *

[*181] Q. Similarly, have you reviewed the maps of the general region of Congressional District 12 with respect to black voting age population, which is, I believe, Joint Exhibit 106, the map that we have been using here today on the easel?

A. Yes, I have reviewed that.

Q. Have you reviewed maps 107 through 109 which are the individual county maps for Guilford, Forsyth and Mecklenburg Counties reflecting population?

A. And Democratic voter registration.

Q. And Democratic voter registration.

A. Yes, I have.

Q. Have you contrasted those maps with the information the maps that have been provided as exhibits -- Exhibits 253 through 258 which are maps of the results of the 1988 Court of

Appeals?

A. Yes, I have.

Q. Have you also contrasted the racial maps, which also appear as Exhibits 237 through 242 in another format with **[*182]** precinct names?

A. Yes. Those show black voting age population.

Q. As opposed to total population?

A. Right, for the those six counties.

Q. You reviewed all of those maps showing voting age population?

A. Yes, I have.

Q. Have you also contrasted the two groups of racial maps with the results for the Harvey Gantt election contest in 1990 which are reflected as a general map at 263 and as individual county maps through 268?

A. Yes, I have reviewed those also.

Ms. Smiley: Did you say 263 through --

Mr. Markham: Through 268.

Q. And as a result of those contrasts and comparisons, do you have an opinion concerning whether or not the assignment of precincts to the 1997 Congressional District 12 was predominately based on race?

A. Yes, and it reinforces clearly the opinion I gave in my declaration on Table 6 for the six counties.

* * *

[*185] Q. Next there's a series of maps beginning with number 272 and continuing to number 287. We'll just look at one map as the illustration, perhaps the map of Wayne

County, 280?

A. Okay. My book ends at 274.

Q. Map numbers were 272 to 287?

Ms. Smiley: What example are you using?

Mr. Markham: Let's use the first one, 272.

Ms. Smiley: Thank you.

Q. Is that still in the exhibit book that you have?

A. Yes, it is.

Q. And can you tell us what this map illustrates?

A. It illustrates wherever the concentration of African American population would be in this county, and you would have red dots. And so there are really two places in the **[*186]** county; one small concentration on the east side of the county on the bay and the other at the west side of the county. But these series of maps illustrate the relative concentration of African American populations in each of these counties.

Q. And what other information would benefit the Court that those maps provide?

A. Well, again, if I were to put all of these maps together and I were assessing this concentration compactness question that I assessed in my declaration, one would see basically that the -- that the areas of where African Americans live in northeastern North Carolina, they are all relatively distant from each other. There's not a sort of pattern of closeness exhibited in these series of maps and these dot matrix maps illustrate this very nicely.

Q. Let me give you the next exhibit book, which begins at Exhibit 276. Let me ask you to make a similar evaluation of the map for Mecklenburg County at number 286. Can you tell us what information of assistance to the Court that map

provides?

A. Okay. Map 286?

Q. Yes.

A. This map has the dots plotted for every 20 African American persons and in the center of the map is **[*187]** Charlotte, you know, the city of Charlotte is in the center of the map. And it shows basically that the African American population in Charlotte is on the north side, a little bit on the west side and a little to the east of the center of the city. But that's pretty much it. There's some small concentrations running up along the interstate as you are heading toward Iredell County, but other than that it's mostly in the city of Charlotte.

Q. And you've reviewed this series of maps, 272 to 287. Have you contracted them with the boundaries of the congressional districts for Congressional Districts 1 and 12?

A. Yes, I have.

Q. And have you any information concerning whether or not the boundaries in a general sense conform to the location of African American population?

A. Pretty consistently. For example, in the six counties in the 12th District, the African American populations on these maps are placed within the boundaries of the District 12.

Q. And can you tell us what relevance the next map, two maps down, 288, which is the map of the 1980s Congressional Districts in North Carolina, what relevance that map has for the issues before this Court?

A. Well, I think the maps of the previous plans, whether **[*188]** it's a map of the 80's or the map of the 70's or even a map of the 60's, all of them show how the State in using

traditional criteria, drew congressional districts and this particular map from the plan of the map of the 1970 adopted April 29, 1971, does not split a single county of the 100 in the State of North Carolina in drawing congressional districts.

Q. Sorry. You are referring to the 1970 map?

A. Yes. Maybe I pulled out the wrong exhibit.

Q. You were referring to 288 A?

A. I got into the wrong exhibit, I'm sorry. My book does not have a 288, that's why or it's out of sequence. 288 A is the plan from 1980 -- after the 1980 Census, I should say, and it reflects that there were a total of four counties split in all of North Carolina. I can't read the one county up in --

Judge Boyle: Avery.

A. Sorry, Avery, Yadkin, Moore and Johnston County were split. All the rest were composed of whole counties.

Q. Next I would draw your attention to Exhibit 288 D, which is a data sheet that comes from a Section 5 submission. Can you tell us from that information what was the most heavily African American congressional district in the 1980's?

[*189] A. That would be District 2, which if you take the 1980 Census was 41.1 percent African American where you take the calculation after the 1990 Census was available is 43.5 percent. District 2 is the most African American district at that time.

Q. Where generally is that district located?

A. That district on the east was Edgecombe County and had all of Rocky Mount in it including Nash, Wilson, a portion of Johnston and Halifax, Warren, Vance, Granville, Person, Caswell and Durham. Durham is in that district.

Q. Next we go forward to Exhibit 289, which I believe you

looked at earlier. What information does that map of the 1970's congressional district provide that would assist the Court with regard to any issues in this case?

Ms. Smiley: Objection to characterization as either of these maps, 288 or 289, providing assistance to the Court. I don't think that foundation has been laid.

Judge Thornburg: I'll let the witness answer the question.

A. These maps either now or in the plaintiffs' exhibit were originally in my declaration in 1998 because in that declaration I was trying to outline the way in which congressional district plans have developed over time in the State of North Carolina. And in the days right after the one-person, one-vote decision, the State was able to **[*190]** draw constitutional districts using whole counties.

1980, the map we just looked at in the previous Exhibit, 288 A and B, they then had to split four counties, but that's the extent to which the state had to in a sense ignore traditional redistricting principals.

1970's, they didn't and certainly in the late 60's as they were sorting out the district sizes as a result of the one-person, one-vote decision, they didn't have to draw districts split across the counties.

Q. What's the maximum number of counties necessary to split in North Carolina in order to achieve one-person, one-vote equality?

A. As a principle, you take the number of congressional districts and you have one less district minus one, so it's 11. If you start with the 1st District and you draw whole counties and you get to some place where you have to split a county, that's

one county split. Now, the Second District you draw all the whole counties and you may have to split a county. It's always one less than it, so 11 is the maximum to be split in North Carolina.

* * *

[*195] Q. In determining how would you, as a political scientist, go about determining what constitutes traditional principal, specifically in a community of interest?

A. One of them is community of interest. So there are a number of ways of defining traditional -- defining communities of interest and among them are metropolitan areas, people who live and work in the same region of the state are defined as having a community of interest. And this map in Plaintiff's Exhibit 303 clearly exhibits shows those communities of interest.

Q. And the map is exhibit -- Joint Exhibit 102 illustrates that the 1997 Plan, in fact, cuts across those communities; is that correct?

A. Yes. Well, Charlotte is in a different metropolitan area than Winston-Salem and Greensboro.

Ms. Smiley: Your Honor, I object and move to strike this whole line of testimony. Once again, the fact a political scientist thinks of these are traditional principles, I don't think any court said any legislature is required to use these maps and there's no evidence that the legislature used these maps, so I don't see they're relevant to the intent of the legislature, what it did or didn't do.

Judge Voorhees: You think the legislature was

[*196] unmindful of standard statistical metropolitan areas, is that not observed, on its face, contemplate they had no idea about SMSA?

Ms. Smiley: Well, Your Honor, first of all the SMSA, these are from 1982. I'm not sure they are current, whether these are the ones that exist. They may be aware of it, you are exactly right, in the backs of their minds, but there's no evidence they are intending to use these in any way in developing their plan. So I still would say they are not relevant.

Judge Thornburg: I overrule that and move on.

Q. Did you finish your answer, Dr. Weber, with respect to that map?

A. Well, one of the criteria that is involved in the community of interest is living in proximity to another person and SMSA's are the best way the national government has come up with with defining metropolitan areas and metropolitan areas whether it's social science or something legislature does, we're all aware of as representing one area of community interest.

* * *

[*198] Q. We looked at Exhibit 309. Is this an exhibit that you had prepared?

[*199] A. Yes. That's the exhibit that was prepared out of Defendants' Exhibit 435 to talk about the assignment of precincts to Congressional District 12 in the 1997 Plan.

Q. I'd like to go back to that Exhibit, 435.

A. Okay. I gave that book back to you at the break.

Q. Okay. Defendants' Exhibit 435. And I'd particularly like to draw your attention to the third page to the second table, which is labeled Table 6 B.2. And my question for you is: what does the information in that table indicate to you?

A. Okay. If I'm with you, I'm at Forsyth County, right?

Q. Forsyth County precincts, that's correct.

A. And I'm looking at Table 6 B.2, which has percent black population rated against percent Democratic in the 1990 Senate election. What it suggests first of all is that, of course, the African American majority precincts in Forsyth County are assigned to District 12. 13 of 13, over 70 percent and two of two over 50 percent to 60 percent, so there are 15 assigned.

If you go to the line at the top of the table, which is less than 30 percent African American, but then reports the Democratic precincts in this particular context, there are a total of eight precincts in Forsyth County that are not assigned to District 12. And only precincts mostly African American population are assigned to District 12.

[*200] Q. I'd like to draw your attention to the first line of that column which shows those precincts which are less than 30 percent African American in total population. Can you tell us how many of the precincts that voted more than 50 percent Democratic in the Senate election were included in the 12th District from that county?

A. There are none.

Q. How many were there available total?

A. Would have been eight.

Q. Are there precincts on the border of Congressional District 12, as it's constructed in 1997 Plan which are Democratic, particular in their voting behavior?

A. Yes. By comparing this data with the maps, I concluded that there are precincts in Guilford and also in precincts in Mecklenburg.

Q. Can I draw your attention to map 265? Ask you to look at this book here. I'll trade out your other book. What does the information in the map at 265 tell you with regard to that question of whether there are precincts on the border of Congressional District 12 which were available to assign on the basis of party considerations to the 12th Congressional District?

A. First of all, this map 265 displays the voter precincts by percent Democratic in 1990 Senate race between Gantt and HelMs. And the yellow line on the map **[*201]** demarks the boundary of District 12, so the area in the center of the map heading northward on the map between the yellow lines is in District 12. Everything that is not in District 12 is then assigned to District 5 in Forsyth County.

If I go to the top of the map where I see a precinct that's sticking up with a little bit of a nub toward the north that's red hatched, that's 50 to 59 percent, so that indicates Mr. Gantt carried that. If I start counting precincts, I go down. I have one, two, three, four, five, six, seven, eight, nine, ten precincts that according to the color coding on the map are indicated as having gone for Mr. Gantt in that election, all adjacent to District 12. But we're not assigned to District 12 and my theory or inference would be if this were an attempt to draw a Democratic district in Forsyth County, you would clearly wind up with those precincts, if they're to go with the other precincts east of that line so you have all of them in the center of Winston-Salem in that particular district.

Q. I would like to ask you about map 266. What

information did that map provide regarding the question of whether there are precincts along the border of the 1998/1997 verse of congressional district today which are a lined Democratic and could be assigned to the district on **[*202]** a partisian basis?

A. This is a map of Guilford County. Again, like the previous map precincts by Democratic vote in the 1997 race, the yellow line starting in the lower left-hand corner, the county goes through High Point and then nearly makes it up to Greensboro and the east side of Greensboro. There are, again, precincts that, according to the color coding, are either 50 to 59 percent African American -- or 60 not African American but Democratic, not been assigned. If I count I believe I have one, two, three, four, five, six, seven, eight, nine perhaps adjacent to District 12 in Guilford County but not, again, Democratic precincts assigned to District 12 but were assigned to District 6. If one is inferring that partisanship was the underlying motivation for the drawing of this particular District 1, again, would have assigned those precincts based on the partisian information in the data base.

Judge Voorhees: How many did you say?

The Witness: I believe there were one, two, three, four, five, six, seven, eight, nine, I believe, maybe ten, if I read the map correctly.

Q. Now, let me draw your attention to map 268 with respect to Mecklenburg County. What information does that map provide on the issue of whether there are precincts available along the border with the 1997 version of **[*203]** Congressional District 12 which if one were constructing a Democratic District 1 would have concluded?

A. This, again, is the same map now for Mecklenburg County precincts by percent Democratic vote 1997 Senate race. This delineates -- the 12th from the 9th is a purple line, so it's easier to see than in the previous map. However, again, I have some 50 to 59.9 percent precincts and 60 percent Democratic precincts in this race. If I do this I've got one, two, three, four, five, six, seven, eight, nine, ten, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 precincts that I can see right adjacent to District 12 that might have been assigned for partisian motivation for.

Judge Boyle: I'm not trying to make this too simple, but in the Order that this Court wrote in '98 Holding Summary Judgment for the plaintiffs, didn't this lay out a whole comparative exercise of those districts -- those precincts next to the 12th District that could have been included? You are just going over the same material now, aren't you?

Mr. Markham: Your Honor, those with respect to registration primarily I was focusing on the 1990 political results from the voting behavior of the voters in the 1990 Gantt\Helms contest for purposes of these questions. But certainly they are similar in their **[*204]** support for the position that there are Democratic precincts available.

Judge Boyle: Wasn't the point of that part of the Order to show by comparison the fact that certain heavily Democratically registered precincts had been left out from those that had high African American population had been included?

Mr. Markham: Yes, Your Honor, those issues dealt with voter registration which was challenged as to its accuracy or predicted value so we focused here on the 1990 Helms\Gantt

election results, which showed Democratic voter behavior rather than merely their registration, and hopefully fills a gap.

By Mr. Markham:

Q. How does this information, Dr. Weber, comport with your opinion as to the racial motivation for the construction of 12th District?

A. Overall in Exhibit 309, if one were to assume that precincts are randomly being assigned to District 12 and issue is not is it race or is it partisanship, you would have about 36 percent of all precincts assigned to District 12 and the exhibit shows that 76 of 79 precincts that are black in population, 40 percent are higher, are assigned to District 12, whereas in all of the partisan indicators they range from 56.5 percent down to 39 percent [*205] on voter registration. So, again, this is evidence it seems to me that clearly confirms the racial assignment of the precincts to District 12 and rebuts the notion that this was an assignment on the basis of partisanship.

Q. And does this exhibit reflect similar statistics concerning the other two contests or election contests the State purportedly looked at?

A. It includes the Court of Appeals and the Lieutenant Governor, taken from Dr. Peterson's exhibit.

Q. Is that generally consistent with the illustration that we just had with respect to Forsyth County?

A. To Forsyth County and Guilford County and Mecklenburg County.

Q. Do you have an opinion about whether it's necessary to draw a 12th Congressional District so elongated a manner in order to have a safe Democratic district in that region in North Carolina?

A. To have a safe Democratic district; you don't have to draw the '97 district to have a safe Democratic district.

Q. And is it necessary to draw Congressional District 12 in some elongated manner in order to have a district likely to elect candidate of choice --

A. I have seen evidence that a district based on Mecklenburg County itself would, in fact, elect an African American to the House of Representatives.

[*206] Q. I want to turn now to the issue of compactness. In your report, Exhibit 47, there's discussion that begins at page 47. Can you tell us in general terms?

A. Excuse me for a minute. I need to shuffle some of this paper in front of me.

Q. This is Exhibit 47. In general terms, where does the compactness -- the measure of the compactness of this Congressional District 12 rank among the districts of the United States Congress today?

A. Well, to give you some foundation, there are reports done in the past by election data services in Washington, D.C. that report both perimeter and dispersion measures of geographical compactness.

Professor Webster, employed by the defendants, updated the measures of compactness in I believe two different affidavits or reports for this particular case. So using all of this information, the data that I have about the old congressional districts as well as the data about the revised 1997 congressional districts, I concluded that North Carolina 12 there being 435 congressional districts ranks either 432 or 433 on the perimeter measure of exactness, so it's almost at the bottom and on the dispersion measure it's either 430 of 431, the reason I

can't come down to whether it's 431, or 432 or 433 is because Professor Webster didn't report a [*207] number for District Eight, which has been revised in the State of New York. So I don't know where Eight falls. North Carolina 12 continues to be the least compact district in North Carolina and the worst in the nation, among the worst in the nation for compactness.

* * *

[*207]Q. Let me return then to the joint exhibits. Now, let's go to the map 126 of the joint exhibits. Dr. Weber, have you had an opportunity to review a number of plans included in the Section 5 materials for 1997 to 1998 from the State of North Carolina in connection with your research in this case?

A. Yes, I've reviewed all of the plans that were made a part of this Section 5, exhibits going to the U.S.[*208] Department of Justice and this one, 126, is one of those plans. It is titled Winner/Cooperr 1.0, Winner/Cooper 1.0.

Q. Have you ever drawn a redistricting plans?

A. Yes, Sir, I have drawn many plans.

Q. Have you ever used the plan '90 software in Louisiana, which is the same vendor that North Carolina used.

Q. What information does Exhibit 126 provide to you concerning the process which led ultimately to the development of this 1997 district?

A. Well, here there are three maps. There's a map that simply for the state as a whole in a very crude way represents the districts and then there are detailed maps. One of district 1 which is 126 B, and one of District 12, which is 126 C. And then there's finally a statistical listing and this statistical listing

is very familiar to me. It's the same kind of form at -- again, that the State of Louisiana produces with their redistricting software.

Q. Now, there will be other evidence that will indicate the time during which this plan was sketched. What does the structure of that plan indicate to you?

A. For a particular district or --

Q. For District 12.

[*209] A. Oh. for District 12. In Exhibit 126 C, it's in Mecklenburg County and then it's in Iredell and then in it's in Rowan and it's in Davison and comes into Forsyth and Winston-Salem and comes a little bit into Guilford into the High Point area, but it stops at High Point in that particular plan. And in that plan demographically is 39.64 percent African American in totla population for district 12. But it's also a district that performs quite well politically. That's the third page of the report. Shows that Senator Gantt in 1990 got 62.7 percent of the vote. Rand got 57.04 in 88 and Lewis got 55.89 in '88. So that's a democratic performing district.

* * *

[*213] Q. Reviewing these maps as a group from 126 to 130, what progression can you see in the construction of the Congressional District 12?

Ms. Smiley: Object to the terminology "progression."

Judge Thornburg: Overruled, go ahead.

A. When we finally get to Cooper 3.0, which is in Exhibit 130, you will see if we look at the map for the 12th District, the map is now very similar to the map before you

on the easel, which is to say all of the previous maps didn't have Greensboro in this district and at this point now they're adding Greensboro in and there's an e-mail message that indicates that–

Ms. Smiley: Objection to the hearsay.

Judge Thornburg: Sustained.

Q. So at what point in the progression of these maps is there a change from the absence of Greensboro to the [*214] inclusion of Greensboro?

A. From Cooper 2.0 to Cooper 3.0, Greensboro has been added to the district and the African American proportion now in District 12 is 47.9 percent. In the previous map, and plan --

let me just go back here to be sure I review the right data -- that is 40.1 percent. So basically the district has been increased by almost eight percent from Cooper 2.0 to Cooper 3.0. That's when the Greensboro blacks were added to the district.

* * *

[*220] Q. Dr. Weber, where do you look to determine what North Carolinian's redistricting principles are, which are traditional?

A. We would look at the history of congressional regarding to that, so you look at the maps and the practices of the state in the past to do that. Particularly, what I guess I would characterize the post one-person, one-vote era, so we're talking about 1965 to the present.

Q. What traditional redistricting principles does your

analysis establish or subordinate to raise in the construction of the 1997 Plan?

A. You have the splitting of political subdivisions, particularly counties and cities censuses in these places. The subordination to compactness. Compactness is not -- geographical compactness is not inherent and there's also [*221] some disregard of communities of interest in this process. Those are, I think, the three major race neutral principles that are violated in the 1997 Plan.

Q. If one were drawing a district based on partisanship in the central Piedmont as a Democratic precinct, would there be a need to split District 77 in Mecklenburg County?

A. No. You can create very partisan districts simply by swapping Precinct 77 with, say, a precinct or two in Forsyth County and have the same partisan result for the purposes of drawing the district.

Q. Are there any majority black precincts in the six counties, parts of which comprise the 1997 version of the 12th District, which conceivably could be assigned to Congressional District 12 that are not assigned to Congressional District 12?

A. No. Every conceivable majority African American population perceived is assigned to District 12. There are none that could be assigned that were not assigned.

Q. I would like to ask the same question with respect to Congressional District 1. Are there any black precincts in the district that the district could have been assigned to that district but were not assigned?

A. No, but I do need to explain that. In Craven County there's a precinct by the name of Harlow that is 70.78 [*222] percent African American. But my examination of the

map and the general boundaries of the district indicate that it is too far removed. There would be more white population in between that precinct and if you were to assign that precinct as well as the adjacent white precincts, you would have fewer African Americans as a percentage in the district.

Q. Have you reviewed the facts and statistics regarding the 1st and 12th District, which are cited in the decision of the Court subsequent to the 1998 Summary Judgment?

A. Yes, I have.

Q. And are each of those facts and statistics accurate, based on your own research?

A. Yes.

Q. Have you conducted -- have your additional analyses been consistent with these data?

A. Yes.

Q. Have you ever, in any of the redistricting voting rights or *Shaw v. Reno* cases in which you have been involved, encountered a boundary segment analysis offered to explain some part of legislative intent?

A. No. This is the first case where I encountered that defense.

Q. Do you have any criticism to such analysis?

A. Within my declaration, I suggest that the analysis of **[*223]** Dr. Peterson to be, I guess what I call a complete analysis would have not only looked at the boundaries around the district, because that's really assignments at the margin, but would have started from the core of the districts. So the core would be where one would start the analysis and understand the assignment pattern of the core then one would proceed to go to the outer parts of the district to understand the total picture.

Also, in the process of ignoring the core, he ignored what we call the convergent precincts, about 80 percent of the precincts, as I understand his analysis, are suggested to be convergent. He then proceeds to count each of the segments equally and, of course, the segments are not of equal importance to the assignment patterns.

Some precincts are larger than others and so, for example, if one were going to say let's exclude Precinct X and find another precinct to put in, you have to find one of equal size to put in or out of the district. So consequently, the counting that he does is counting on equal units and, in essence, he's creating what I call an unweighted average when he should have counted and weighted average for this purpose.

Subsequent to the writing of my declaration, when we got the data and could subject it to, you know, rigorous analysis, we discovered there are 13 segments that border **[*224]** on Davie County. And we looked at the data in particular because the maps we were getting for Davie County showed no precincts. And we noticed there are no precincts in Davie County, only townships that are the political subdivisions that are used in the data base of the state.

And we noticed that all of the political data, with whether it's voter registration data or returns for the '97 race or the two races from 1988, all have the same percentages. So there's a common percentage attributed to every Davie segment so there are 13 segments that they are using the county average as the segment number and really the segments are not varying in terms of their political makeup or their racial makeup in that particular analysis.

So I would suggest that if I had encountered that, I

would simply have excluded all of those segments because they are not -- they create erroneous information about the assignment patterns undertaken by the state in that particular analysis. In assisting you with the deposition of Dr. Peterson, we prepared some exhibits that were deposition exhibits.

Q. Let me direct your attention then to Exhibit 23. From the deposition exhibits, which is the first of that series of exhibits, I'll ask if you can explain what information is conveyed in that exhibit?

A. I don't have a copy of that in front of me.

[*225] The reason these were prepared is what we were provided by Dr. Peterson's company in the state was literally not intelligible to the -- one would have to understand the coding scheme of the analysis to do this, and it took awhile to understand it, so we prepared these exhibits to display for what in his report he calls type P divergent, partisan divergent segments.

Here we're using Democratic registration and African American registration. So if you look at the top of the table, we have what's called observation 6 in the data base, which is segment 6, which has Mecklenburg Precinct 81 as the internal precinct and the external precinct is Mecklenburg Charlotte 80.

We listed each of the segments that he described as type P divergent. And in particular what I found interesting by having done this particular exercise is that whenever he's got a type P divergent segment, that type P divergence are very small. They're one or two or three percentage points at most. So what I guess, to use a cliche here, is in this exhibit for the -- I think there are 20 some, maybe 24 precincts characterized as type P divergence. He's making a mountain out of a mole hill,

which is to say the differenoes that are a discrepancy to divergence are very small and they happen to be in the direction that he would like them to be.

[*226] So, for example, the Democratic -- excuse me, the black percentage for Charlotte 80 is .1521, the black percentage for Charlotte 819, internal segment is .1484. So if you go down and make all of the comparisons, you will see one, two, three percentage points relatively trivial and, technically, if you do the difference and means test would be statistically nonsignificant types of comparisons he has in this table.

Q. Is that also true of the differences we see of those segments characterized of confirming the racial predominance here?

A. Yes. That's the next exhibit, Exhibit 24, where there are fewer of those, but those are the type that's divergent. Type P-- other thing that sort of hit me when I first prepared this, is how many of these segments are Davie County segments external. As I suggested a few minutes ago, I would exclude those segments because, again, they are simply using the same data for all of the political comparisons with those particular segments.

Q. In fact, does the analysis in any way take into account whether a precinct segment is in an area that's a land bridge connecting two areas or whether it's in one of the core counties or does it matter at all to that analysis?

A. No. At one point, I think I counted the number of **[*227]** precincts in District 12, that there's no choice. It's a single precinct that connects one piece to another piece.

You have to have the precinct in the district in order to make it contiguous, and there were in these divergent segments,

there are a number of these precincts that turned out to be divergent.

Again, you have no choice. You have to take that math, if that's the math that you are going to follow to draw a district. There are a number of those. I think I counted as many as ten or 11 of those precincts in which the state had no choice but to take that path to keep the state contiguous.

Q. Exhibit 25. Can you tell us what it provides concerning this sort of analysis?

A. 25 is an attempt to summarize for all of the six counties in the 12th District where exactly these divergent, type P divergent precincts are and where the type R divergent precincts are. As you can see from this exhibit, for example, on the type P, I believe 11 of 20 those -- no, let me start over again.

15 of those are in the interior counties, the Davidson, Iredell and Rowan counties. If you are going to connect Forsyth and Guilford and Mecklenburg together, you have to go through those three counties and 15 of the 26 type P divergent precincts are in those counties. And for **[*228]** the type R segments, it's 8 out of 15 that are in that in those counties.

The other thing that I asked to be done when this table was put together is to characterize what percentage of the African American population resides in these counties. If you take the third column over and you add that together, it adds up to a 100 percent or the three lower counties; Forsyth, Guilford and Mecklenburg. 83 percent of the African American district is in the three peripheral counties, the counties in the boundaries, the counties in between only have 12 percent of African American population in them.

Q. Exhibit 26, is that another exhibit that you prepared?

A. Yes. Here we were concerned with putting in one exhibit, again, for the purposes of the deposition with Dr. Peterson. The performance of the '92 Plan, District12 and District 1 and we had both here the black population and the percentage achieved in the general election by the congressmen and, of course, you can see in each case the performance of the district is greater than the percentage African American in the district.

Q. Next looking at Exhibit 27. Is that another exhibit that you had prepared?

A. Yes. This exhibit counts up the number of times in **[*229]** effect that I believe that either the party or the race explanation predominates and it's interesting that, in Dr. Peterson's report, he focuses primarily on the Democratic registration explanation, which is the explanation that has the greatest degree of credence for the partisan explanation, the last two columns, 23 to 13 or 20 to 12 or 26 to 15.

On the other hand, if you look at the political races and, again, using all of the segments, he has in his analysis not excluding any segments, that does not show a stark picture as the picture that Dr. Peterson conveys in his report. And, of course, we know through this deposition testimony or Section 5 history the state admits that the party registration data.

Ms. Smiley: Objection, your Honor.

Judge Thornburg: Sustained.

Q. Let me ask you: is it possible to apply the segment analysis to a district with a large number of split precincts?

A. No. Well -- technically, you could do it for the population data. Once you get to the political data, then you

have to have some mechanism whereby you can, in fact, split the population -- excuse me -- split the partisan registration data or split the political data. And, typically, with these state-wide elections, the data are **[*230]** not split in the precincts that exist. So if the precinct is split, the state has to come up with some sort of rule or the analysis has to come up with some sort of rule as to how they will allocate the particular portions to each of the districts that you do the segment analysis.

Judge Boyle: Go ahead and finish your question as to his criticism of Peterson's analysis, because I wanted to hear that answer.

Judge Thornburg: Objection went to your statement to what the state was conceding, so simply answer the question without presuming to know what the state concedes or doesn't concede.

The Witness: It is my opinion that the registration data is the least reliable data to use for purposes of talking about political performance. The best data that's in the state's data base is the 1990 Senate data, because those precincts were in existence when the data base was put together.

For example, the 1988 precincts there were changes. So there are some cases in which I don't trust the 1988 data in the state data base because they didn't, in my judgment, properly allocate the changes in the precinct lines to create the data. There's a good example in Precinct 77 where the data in 1990 makes sense given the racial composition of the precinct. And there's much **[*231]** greater support for Republican candidates for the heavy majority precinct in 1988 doesn't make sense. There's that kind of black cross-over in the two very partisan general elections. I see that in other places in the data base.

I'm most likely to trust the 1990 political data and less likely to trust the political data as to the performance.

Q. Use of the performance data rather than registration give greater support for racial rather than partisan segregation?

A. Yes.

Q. Is it possible given the problems you will have with split precincts?

Ms. Smiley: I object to his leading the witness. I believe this is an expert.

Judge Thornburg: Let's move it along. That's fine.

Q. Let me ask: is it possible to test this by applying it to other Congressional Districts which have been invalidated as predominantly race based under *Shaw v Reno*?

A. I think the analysis that Dr. Peterson has offered us could be done for other districts. You know, assuming that you get the right maps and the right data and it's done properly, I'm not sure in this case I believe it's been done properly.

[*232] Q. Is Dr. Peterson's analysis and report reliable?

A. No, it's unreliable.

Q. In your view, is it relevant to the issues before the Court?

A. Well, if we assume that the question is it party or race is an important question, it has some bearing on that question if it were appropriately done. And I suggest that it has not been appropriately done.

Q. Are there any other criticisms that you have of the analysis by Dr. Peterson?

A. If you could put a map up for me.

Q. Which map?

A. It would be the map where Iredell County abuts Davie

County. I think there's a map in our exhibits somewhere that does that. Maybe it's just the big map.

Q. We have Iredell as part of the Exhibit 106 map; is that sufficient to show the point?

A. This is not the best map to do it, but I can point out the area that's in question. What I did was knowing his segments. His data base tells me his segments. Okay, I then went along and I verified whether or not there were any segments in error. And I noted that there's a precinct in the northern part of District 12 in Iredell County that abuts Davie County, but yet there's no segment in his data base showing that any segment from Iredell **[*233]** County abuts Davie County segment, so that's an omitted segment from the analysis.

Q. Why was it in your view -- or what is your view of the importance of the convergent precincts to an analysis?

A. Well, again, if this is -- it's kind of a preponderance explanation. If 80 percent of your precincts are convergent and many, many, many of those precincts are at the core –

Judge Boyle: What's "convergent" mean? Explain it.

The Witness: It means, basically, that the racial percentage for the inside precinct is greater than the racial percentage for the outside precinct. Or for the party explanation, the Democratic percentage on the inside is greater than the Democratic percentage on the outside. That's 80 percent of the precincts.

Judge Boyle: That didn't explain it. I'm too simple to understand that. You have to use more primitive language.

The Witness: It's simply -- I'm trying to think about it. It's simply the question of what is the difference between the percentages. And if the percentage of one is greater than the

other and it is consistent with either the racial explanation, that is races inside and not outside.

[*234] Judge Thornburg: Inside the district?

The Witness: Yes, or outside the district, then that would be characterized as a convergent segment.

By Mr. Markham:

Q. And a divergent segment, in contrast, would be one where --

Ms. Smiley: Objection, your Honor.

Judge Thornburg: Overruled.

Q. It would be where party is greater outside in the outside precinct than inside. The Democratic percentage outside is greater than the Democratic percentage inside or it would be where the racial percentage outside is greater than the racial percentage inside. Those are the characteristics of the divergent precincts.

As I suggested earlier in looking at Exhibit 25, most of these divergent segments are not in Forsyth, Guilford or Mecklenburg County, but they're in the three counties that connect the ends of the district and in a number of cases they're there because they are the only path that the state chose to take with –

Judge Boyle: So you are saying it's only as a product of necessity that there would be a divergent district; where necessity is not a factor, they are all convergent?

The Witness: Yes, that's the tendency; it's not **[*235]** perfect.

Judge Voorhees: And convergent depends on which theory you are trying to prove?

The Witness: Yes, sir.

Judge Voorhees: So if you are trying to prove a racial predominate theory, then --

The Witness: No, if the theory is -- if it's race that predominates rather than party, then you will have a high percentage of convergent precincts. If you have any precincts that are divergent, they will be divergent in the direction of putting the blacker percentage of the -- or the higher African American percentage outside the district than inside the district.

Judge Boyle: But that never happens.

The Witness: It happens occasionally.

Judge Boyle: In District 12?

The Witness: It happens out of necessity, the need to draw the district in a narrow way because you have large populations in Forsyth, Guilford and Mecklenburg that anchor the district. So the geography is dictating the lines that are going on in Iredell, Rowan and Davidson.

Judge Boyle: But I thought there was no instance where you had a majority African American precinct left out of District 12.

[*236] The Witness: That's correct, not in a single one of those.

Judge Boyle: There are instances where you have a majority Democratic precinct left out, but that's because of necessity?

The Witness: No. Because, as I pointed out yesterday, there are currents in Guilford, Mecklenburg and Forsyth where demographics bordering on District 12 were not future into the district. They all happened primarily to be less than 30 percent white -- or, excuse me, less than 30 percent African American.

Judge Boyle: That's what I was just saying, the only times they are left out is where they don't have a minor

population?

The Witness: Yes, sir.

By Mr. Markham:

Q. If you analyze the segment analysis using the 1990 Helms/Gantt election, what then do the results indicate?

A. Using population as the racial comparison, it's by two for party, two greater for party than for race. For VAP, it's even 16, 16; and for registration, it's 16 per party and 13 for race. So, again, divergent segments.

Judge Boyle: But if you read the opinion in the Summary Judgment Order, it laid all of this out in detail. That was one of the anchors of the opinion was that race **[*237]** was a more pure predictor of inclusion than party?

The Witness: Yes, sir.

Judge Boyle: And what is it that we're back here to do, to hear that from you or to somehow come up with voter participation as a substitute for party? You follow the question?

The Witness: Yeah, I follow your question. I guess I don't quite know how to respond. I think the reason --

Judge Boyle: Well, that Opinion apparently relied on voter registration rather than voter participation.

The Witness: Right. And basically here.

Judge Boyle: But the two are synonymous, aren't they? There's no great distinction in performance between voter registration and voter participation when analyzing non-precincts.

The Witness: The way I analyzed participation, I'm looking at participation in the actual contest. So, for example, I analyzed participation in the Gantt/Helms race of 1990, and

my theory is that that -- is the Gantt/Helms is the best available data that the state had in its possession and used at the time that it was doing the redistricting; that is, in fact, I think reliable and accurate such that it would give them an understanding of [*238] Democratic performance or Republican performance in each of the precincts.

And, furthermore, it has the virtue of involving an African American candidate so you, in fact, could get a real test of perhaps white hostility to a Democratic candidate who happens to be African American. So I think it's a very appropriate political performance measure and a much better performance measure than the registration measure.

Q. Are those political performance measures illustrated by the maps we reviewed yesterday concerning the Helms/Gantt election, for example, for each of the urban counties?

A. Yes, they are.

Q. And we did not look in detail at the Court of Appeals race maps, but you have reviewed those. Are they also an indication that in terms of Democratic performance that there's that same type of relationship?

A. Yes, but I've already said earlier this morning that not in all cases do I trust the Court of Appeals data, because in some places the precincts changed between '88 and '90, and the state didn't, I believe, accurately translate those data.

Judge Boyle: So the state had from the '90 election data, the Bureau's most reliable basis upon which [*239] to use race and yet disguise it as party in imposing districts?

The Witness: I'm going -- I think I'm going to say no, and the reason I'm going to say no is because, in my analysis of cross-over in the Gantt/Helms race in the area of District 1 and

the area of District 12, I'd have to look back at the precise numbers. But my remembrance is that you've got pretty strong white cross-over, indicating that even though you had an African American candidate who had happened to be the Democratic nomination against Senator Helms in the context of Southern politics, Mr. Gantt did quite well among white voters.

Judge Boyle: Among white voters?

The Witness: Yes. Of course, he did very well among African American voters.

Judge Boyle: I see.

Judge Voorhees: When you say "participation" and "performance," are you using those terms interchangeably?

The Witness: No, sir, I'm not. "Participation" is simply going to the poles and voting in the contest, voting either for a Republican or Democratic. In the Democratic primary voting for the one of the Democratic candidates. The other is what percent does a Democratic candidate achieve in the election. That's the definition [*240] of performance.

Judge Boyle: But if you are trying to isolate those precincts that have a race-driven content rather than a party driven content, the Helms/Gantt race is going to give you the best indicator of that, isn't it, so that you can distinguish, say, in Mecklenburg, between a purely Democrat performing precinct and a minority Democrat performing precinct and know which is which?

The Witness: Yes.

Judge Boyle: That was the point of the question that you had a hot house example there, which you never had before, if you were a legislator that allowed you to pick and choose among what might otherwise appear to be simply generic

Democratic districts and now refine out of those the race-driven Democratic districts.

The Witness: Well, and the districts that perhaps because it's got some African American in the precincts as well as whites willing to support an African American candidate.

By Mr. Markham:

Q. Do the voting performance analysis support the same analysis the district court reflected regarding registration?

A. Yes, very consistent.

* * *

[*242]Q. Is there any particular information from these documents which bears on your analysis?

A. Yeah, if I could turn to Exhibit 211. One of the issues that this was raised perhaps as a –

Judge Voorhees: I don't seem to have 211.

The Witness: Should be the 12th District starts on page 1224.

Judge Voorhees: I can look on here.

A. I'm looking at the very last page, which is page 1227. I don't know quite how to characterize the [*243] assertion, but I think the concern was whether or not Congressman Watt, in 1998, under the circumstances of having a revised Congressional District and revised so that there was a primary in September and, of course, the general in November, whether or not the Republican challenger had the resources and the capability to make an effective race in that particular district.

The best information that I have is from this report on page 1227, which shows that John Scott, is it Kadle, I guess,

Kadle, who got 42 percent of the vote against Mr. Watt, spent $381,000. And, generally, a challenger that spends that kind of money would be regarded as a serious challenger. So the redrawing of the district didn't prevent the Republican candidate from making a serious challenge to Mr. Watt at that particular time.

Q. I'd like to draw your attention next to Exhibit 217, which is the article of Pildes and Niemi. My question for you, Dr. Weber, have you relied on that article in the preparation of your analysis and report?

A. Yes. I relied on this article for the data near the end of the article. In my report, I report some data for the geographical compactness on the 12 North Carolina Congressional Districts in the 1980's, and those data were taken from this report, page -- this article, page 572.

Then also, as I put in my report, anything about the 1992 [*244] plan that was ultimately found unconstitutional, those compactness scores come from this article, too.

Q. Okay. Next, drawing your attention to Exhibit 221. Which is the Keech and Sistrom chapter?

A. Yes, sir.

Q. Can you tell us, have you relied on this in the preparation of your analysis and report?

A. Does it -- first of all, this is a chapter from a book edited by Bernie Grofman and Chandler Davidson, and in the book they have a chapter on each of the southern states and so Bill Keech and Mr. Sistrom -- Mr. Keech used to be at the University of North Carolina Chapel Hill. He contributed to this chapter.

For me, the most important thing is to understand the

extent to which either threats of lawsuits or lawsuits in the 70's and 80's brought about changes at the local level in cities and counties of North Carolina and to understand that one of the outcomes of these lawsuits was to change the method of local districting in a way that produced greater racial segregation within the precincts; that is black precincts were created that were quite homogenously black and adjacent white areas were put in white precincts so as to afford the opportunity to have racial districts in these communities in North Carolina. And that confirms for me the point that I made in my declaration, that now **[*245]** in North Carolina many of the cities and counties are split very homogenously into black majority precincts and into white majority precincts, which can be used by the precinct processors in the State legislature to draw State legislator districts as well as Congressional districts.

Q. Switch now to Exhibit 226, which is a map of the Congressional District comparing the '92 and '97 Plans.

A. I don't have that.

Q. At Joint Exhibit 139, I'd like to ask you what information can be gained from the review of this map and/or a comparison with Joint Exhibit 106? I'll step on this side.

A. This map, it's number 226?

Q. Map 226, yes.

A. This is very similar to the map that we looked at yesterday for the 1st District where the old Congressional District of 1992 is outlined in red. And so in this map you can see you go to Durham and then you come to the northern part of Orange and Alamance counties. Ultimately you get to Greensboro and you pose in yellow is the 12th District that's under challenge in this particular case.

And what I find rather interesting is that there's a substantial overlap in the African American neighborhoods of Greensboro and Winston-Salem and Charlotte between the two maps, suggesting that the core of the old 12th **[*246]** District that was primarily African American is, at least as it's known down to the six counties in the current challenged 1997 Plan, has retained in that particular district.

* * *

[*248] Q. And next turn to Exhibits 140 through 142, which are maps of Forsyth, Guilford and Mecklenburg counties. How do these maps differently illustrate party performance **[*249]** than the maps of the Court of Appeals in the Helms/Gantt maps that we have been looking at yesterday afternoon and this morning?

A. Well, the difference in this map versus the maps that we're looking at yesterday and this morning, this simply says whether or not there were some Republican victories and the contest in question are the '90 Senate race, the '88 Lieutenant Governor race and the '88 Court of Appeals race. So if it's yellow here, it indicates there were no Republican victories in these adjacent precincts.

Yesterday I was looking at Forsyth. I also counted precincts that were not just abutting the boundaries of District 12, but if there was a precinct like the ones in yellow on Exhibit 40 and there was a precinct next to it, that might have also, in this exhibit, in fact, indicated it was a Democratic performing precinct on the 1997 race.

For example, I counted that as a precinct that could have

been assigned as a Democratic precinct by taking both of the precincts and putting them in the 12th District.

Q. So these maps, they don't show the voting performance of precincts beyond those that immediately touched the edge of the district.

A. It does not show beyond nor does it tell you what the percentage is. We don't know whether the percentage in the yellow precincts was 60 percent Democratic or 65 **[*250]** percent Democratic.

Q. Also, do these maps illustrate whether there may be precicnts inside the Congressional District, for example, in connectors that have more than one Republican victory?

A. I don't believe there are any connectors here.

Q. Do they show the voting performance or behavior of the precincts inside the district?

A. No, it does not.

Q. Is there any dispute, at least with respect to black North Carolinians, that race and party are linked in North Carolina?

A. Well, there are two very important behavioral indicators that indicate that being African American precincts, one to be a Democrat. That is, we know the percentage of African American who happen to be registered as Democrats is very, very high. Over the series of studies I have conducted from '90 to '98, Democratic candidates get high percentage of African American support, typically over 90 percent from African American voters.

Q. Can the effects of race and party be disentangled?

A. Yes, I think they can. I think we have seen in this examination yesterday and today and through the stimulation of the partison analysis and report that it, in fact, can be

disentangled.

[*251] Q. When these are disentangled, which one is predominate as an explanation for the construction of Congressional District 1 in the 1997 Plan?

A. Race is the predominate factor.

Q. When disentangled, which is the predominate explanation for the construction of Congressional District 12?

A. Race is the predominate factor.

Mr. Markham: That concludes my questions, Your Honor.

* * *

Q. You still have Exhibit 243 in front of you; it's a map?

Mr. Markham: I have it, Dr. Weber.

A. Okay.

Q. I just want to be clear. You indicate that this map shows some democratic precincts not assigned; is that correct?

A. Yes.

Q. Okay. Tell me, Dr. Weber, based on one-person, one-vote considerations, could the General Assembly have assigned all of those high-performing Democratic precincts to District 1?

[*252] A. For every precinct that they chose to assign to District 1, they would have had to have taken one or more other precincts out, so it's always a calculation to take out one that is more or less Democratic than the one you put in.

Q. So in other words, the other precincts that you were saying could have been assigned based on that map, in fact, you couldn't just assign any one or all of them or any one or more of them to the district without taking something else out?

A.That's correct, yes.

Q. So you didn't intend to leave the impression that all of those precincts should have been included in the district, did you?

A. If I had been the architect of the plan, I would have tested those options and I, of course, can't tell you with any certainty whether or not anyone tested those options.

Q. That was not my question. I asked you: you did not intend to, in any way, create the impression that the fact all of these precincts were not assigned to the district shows anything. I mean, it shows something?

A. It shows there were Democratic precincts that were not assigned.

Q. But that's all it shows, because they wouldn't have been based on population. If the district now is [*253]one-person, one-vote aligned, then you can't just assign those other precincts?

A. No, but if I were doing it, I would have to test, by taking something else out and seeing what the result was.

Q. But you didn't?

A. I did not.

Q. In fact, you have testified that the district is Democratic and strongly Democratic?

A. It performs Democratic, yes.

Q. It's voting is Democratic in the various measures?

A. Right.

Q. And, in fact, if one was going to create a Democratic district, wouldn't one take the most strongly Democratic precincts first and put them in?

A. I think you would start from the standpoint of race neutral principles.

Q. Well --

A. And then you would -- so, for example, as I suggested, that there are 12 counties in northeast North Carolina that could go into a district. After you have done that, you would test to see whether or not you have a Democratic or Republican district.

Q. Well, you're talking about something else now. When we were talking about having a map and say Democratic precincts, you are concerned about all of these precincts [*254] were assigned to District 1 and 12. But isn't it true that if you are trying to create a Democratic district, you would assign the most Democratic performing precincts?

A. But you can't -- and I'm not going to disagree with you. Yes, you would, but you can not subordinate traditional race neutral principles in the process of doing that. So, for example, you can easily take all of Mecklenburg County and find a few additional thousand people and draw. And I've seen plans in the exhibits that suggest that's a marginally Democratic district.

Q. What would happen to the other public incumbent if you took all of Mecklenburg County and essentially made it one congressional district?

A. There are currently, at the present time, two incumbents, one Democratic and one Republican, that lives in Mecklenburg County.

Q. Your suggestion that you eliminate one incumbent and draw one district and see if you can draw one Democratic district in Mecklenburg County doesn't work for the Legislature, does it?

A. I can't speak whether it would work in the Legislature or not. I'm speaking whether one follows race neutral precincts to do this.

Q. As far as you are concerned, they do not include keeping districts for your two incumbents in the county?

[*255] A. That's not one of the list of things. It's in the list there.

Q. Sir, your testimony to the Court that a legislature is acting unconstitutionally in violating and subordinating traditional race districting principles if it does consider incumbents and gives an incumbent a district?

A. No, I'm not saying that.

Q. Okay, thank you. And, in fact, in this instance you are aware that the Legislature was attempting to create a 6/6 partisan split, essentially give six Democratic districts and six Republican districts?

A. From reading the record, that's my understanding of their intent.

Q. So, therefore, creating a Democratic district in the 12th and creating a Republican 9th in Mecklenburg is consistent with the legislators' motive; is that right?

A. Yes.

Q. And if you are trying to create a Democratic district, six Democratic districts, doesn't it make sense you take your most Democratic precincts and put them in those districts?

A. No, because you have a Democratic district adjacent to District 12. And so, as I suggested yesterday, and I believe in answering one of the Court's questions, you [*256] would seek to balance. You would have fewer Democrats in the 12th and fewer Democrats in the 8th so that you would ensure that when

you have an open seed contest in 1988, the 8th would rush to Democratic or be competitive to return a Democrat to that seat.

Q. You don't know anything about political dynamics going on in the Legislature involving District 9 and 8 and 12, do you?

A. I don't recall anything in the record that dealt with any detail about those issues, no.

Q. So you don't know anything about the concerns of former Congressman Hefner in District 8 and where he might want the predominate boundary line?

A. I don't know anything about what Congressman Hefner asked.

Q. Those kinds of things may have resulted in lines that you don't like, but they are Democratic still performing districts, aren't they; District 12 is a Democratic performing district, isn't it?

A. Yes, that's clear.

Q. And, in fact, aren't there six Democratic performing districts in the '97 Plan?

A. I'd have to look at the data again to be sure of that.

Q. You only looked at 1 and 12?

[*257] A. No, I had access to the reports for all of the districts. It's just that they are not in front of me, so I can't verify that for you.

Q. Looking at as much time as you have spent looking at North Carolina politics, if you look in the 1997 Plan you can't tell the Court that District 5 is a Republican district?

A. I know District Five is.

Q. It's a heavily Republican district?

A. Once upon a time it was a Democratic district.

Q. Is it now a very heavily Republican district?
A. It's a Republican district.
Q. And District 6 is very Republican?
A. Yes, it's Republican.
Q. Is District 9 and 10 a Republican district?
A. Yes, but 8 was not a Republican district.
Q. Eight was a Democratic district. That's one of the six Democratic districts, isn't it?
A. It's now represented by Republican.
Q. So the Legislature made a mistake?
A. Perhaps they had something to do with the candidacy.
Q. That may be true, but you don't know what the Legislature was thinking about when it drew the lines for the incumbent of District 8?
A. No, I did not find anything in the record that]*258] indicated that.
Q. So you didn't inquire about any real world political issues that might have been going on that might have determined why the Legislature drew the line where it did?
A. No. I was aware that the Legislature was partisanly divided at the time that it was drawing the plan and so there are going to be some of those partisan issues involved, but analysis that I did and see is one in which race predominate district in the construction of District 12 and District 1. After that was done, then these other issues were brought along to be revolved.
Q. When you crunched the data on the '97 Plan and you concluded race was the predominate motive, you never considered any other hypothesis other than race, did you?
A. I knew Dr. Peterson had an alternative theory at the time.

Q. Let me interrupt you. Is the first time you crunched your numbers -- let me interrupt you.

Judge Thornburg: Answer the question, then explain it, if you will.

A. I need to hear the question again.
Q. When you first started crunching your number tables two and four, which you supplied to the Court in a summary judgment proceeding, the only thing you considered when you determined that race was predominate was the [*259] hypothesis of race?
A. Yes, that's true. And what I was unable to do at that time, because we were operating under very severe time constraints, I had just received Dr. Peterson's report. I knew that this was going to be an issue, but I knew that I did not have time at that time in order to explore the alternative hypothesis.
Q. My point is you already had concluded that race predominate district and never considered the political alternative until it was suggested by Dr. Peterson?
A. That's true, yes.
Q. Okay. Now, isn't it true that one of the reasons that you never considered -- that you considered race was -- sorry, I'm not ready to start asking questions. Let me start over.

Isn't it true that you only considered race because you believed the North Carolina computer system only displayed racial breakdowns and did not display political breakdowns?
A. At that time I had not seen the screens for North Carolina. I had seen the screens in Louisiana. And in Louisiana, they did not prominently display political information on the screen.
Q. Do you have your declaration, Exhibit 47, in front of

you; your declaration that was filed in this proceeding?

[*260] A. Yes.

Q. Could you turn to page 52?

A. Yes.

Q. This declaration was filed in September -- well, it was served on the parties in September of this year?

A. Yes.

Q. Just before your deposition?

A. Yes.

Q. On page 52 of Exhibit 47, could you read -- no, I'm sorry. Let's not do that. Isn't it true at that point you indicate that the computer screen used by the North Carolina Legislative GIS system displays racial breakdown as the plan design is working and does not supply political breakdowns?

A. That's my belief at the time based on the software used in Louisiana, which is the same software used in North Carolina.

Q. As I asked you in your deposition if you were familiar with the North Carolina computer system, you said yes, it's the same as Louisiana?

A. Yes.

Q. Did you ever bother to learn about the North Carolina system?

A. Yes, I have.

Q. Is that when we provided you exhibits showing [*261] photographs of the computer screen?

A. No, I subsequently asked counsel to inquire on that matter.

Q. When I deposed you, you still believed that the person drawing the districts could only see racial data?

A. That's correct, yes.

Q. That was one of the bases for your concluding that you only needed to look at race data, isn't it?

A. Yes. I now looked at the screens. I can see it's very inconvenient to explain political data, much more convenient to display racial data.

Q. But you were -- this was not correct and you based your whole -- you based your reasons -- excuse me. You were not correct about the computer screens in the data available to the General Assembly?

A. That is correct, yes.

Q. In Tables One to Four in your Exhibit 47, you found that race predominate district because the portions of split counties and towns were more heavily African American, which assigned to District 12 or district 1 and more white when assigned to an adjacent district?

A. That's part of the inference, yes.

Q. Haven't you also testified that African Americans are probably the most reliable Democrats?

A. Yes.

[*262] Q. And they register and vote heavily as Democrats?

A. Yes, that's true.

Q. I think percentage you have been using is 95 to 97 percent?

A. As registered Democrats, yes.

Q. Okay. Doesn't it follow then that the assignment of high African American -- if you find the assignment of African American precincts District 1 and 12 is not inconsistent with a political motivation, is it?

A. It's inconsistent, as some of the white precincts are Democratic as well.

Q. Are the white precincts as heavily Democratic?

A. No.

Q. In terms of saying the most Democratic heavily precincts, it's not inconsistent with political motivation, is it?

A. If the goal, as I believe the goal to be, is to create a district with as large a percentage African American population, as large a Democratic percentage as African American, that's not an inconsistent conclusion.

Q. I's also not inconsistent with a conclusion that politics predominate district, is it?

A. It is inconsistent if you assign all of the majority African American precincts to either District 12 or District 1 and then you don't assign certain Democratic **[*263]** precincts to it. The theory would be that if you are going to assign and create Democratic districts, then you would assign Democratic precincts.

Q. But, Dr. Weber, your Tables One to Four do not pick and choose between precincts. You just said if you don't assign particular white precincts, your table does not distinguish whether a white Democratic precinct is right next to District 1 or is somewhere out there in the county somewhere; isn't that right?

A. No. I know that because of the maps, but Table One, Two, Three and Four is about split counties and split cities. The precincts are dealt within table five.

Q. That's right. But your split counties -- all right. let's talk about table five. There you are, you have after American precincts, you show where they are assigned to the different

districts?

A. Yes, ma'am.

Q. Isn't it assignment of the heavily Democratic precincts. Wouldn't you get the same Table Ffive if you -- excuse me. Wouldn't you get the same Table Five with the racial breakdown if what the Legislature did was assign a heavily Democratic precinct?

A. You might at the top have the same precincts. As you get down further to the middle of the table, you would have deviations from the pattern of racial assignment **[*264]** versus political assignment.

Q. Are you talking about Table Six now?

A. No, I'm saying if one were to have put the political data into Table Five as well as the racial data and then you sorted the table based upon, say, the 1990 Gantt/Helms race, there would be some precincts at the top that would be the same in both tables. But as you go down in there, you would have some Democratic precincts that would be higher in the Democratic table versus those that are in the racial table.

Q. But you still would have created a Democratic performing district and you would have started with your heaviest Democrats or most loyal Democrats?

A. If you had chosen to do that, there are adjacent areas in Forsyth, Guilford and Mecklenburg County that are Democratic that are not assigned to District 12.

* * *

[*269] Q. Your tables one through five, where you are looking at the assignment of African American precincts and

other precincts, it would be fair to say that's purely [*270] circumstantial evidence, isn't it?

A. I don't consider myself an expert on evidence, but Iheard that term used to describe the kind of work that I'm doing, yes.

Q. Well, it could be when you look at your data, you might see a racial split on the raw numbers. That's what some of your data is showing, right?

A. Yes.

Q. It could be there's a non-racial motive for a split county or split precinct that wouldn't be reflected in your data; isn't that correct?

A. There are some counties in Table Two, for example, that I would assert are not racial, but they are not assigned to District 12 or 1.

Q. If you don't add that extra piece of information that those are county lines that are dividing those towns, then you could just conclude that race predominate district?

A. No. I did put an asterisk in Table Three and Table Four whenever the county lines split the community, and that's noted in that data base. For example, best example is Rocky Mount.

Q. And you did -- you took that information and you put those stars on your table. But that's not something you would know when you had just taken your tables and run the data?

[*271] A. No. All of this has to be done in conjunction with maps. You can't address this without the maps that you are using.

Q. Well, if there was direct evidence and testimony that a particular town was split so that a military base could be put

into a particular district, that wouldn't show up on your tables, would it?

A. No, it wouldn't. I'd have to go to the record to know that took place.

Q. But that would defeat a racial interpretation of your data for that town?

A. No. My experience in terms of how military bases have been dealt with in congressional redistricting suggests that typically Democratic incumbents want military bases so that they can have nonvoters in their districts, and I speak of that as a Democrat.

Q. What if I told you that military base was put into District Three, which is a Republican district, with the intent of the Legislature to keep a Republican?

A. It's a marginal Republican district, but the overall pattern that I have seen around the country is Democratic incumbents want --

Q. That overall pattern does not fit the facts in North Carolina.

A. In that particular one case, it does not fit that [*272] fact, no.

Q. But then your data tables don't reflect any of the real life decisions made by legislators such as that, do they?

A. No. It reports the data as the decision was made and adopted and precleared by the Department of Justice.

Q. Now, I think your data does not go quite that far, but it merely reports there are some racial divisions from which you concluded race predominate?

A. That's correct.

Q. But direct evidence could show that any number of

those divisions had nothing to do with race?

A. It's possible for that to happen, yes.

Q. For purposes of your analysis, you don't need to know or care to know?

A. No. I do -- again, I read the record and if the record speaks to it, I know it. If the record doesn't speak to it, I wasn't personally present always here in Rleigh when the plan was adopted. I wasn't sitting by the computer watching the man move the mouse.

Q. You don't know anything about North Carolina politics?

A. I would submit that's not true.

Q. Well --

A. You could probably stump me with some trivia, [*273] certainly.

Q. I certainly would not care to stump you with trivia, but you don't contend that you know the political issues that were before the legislature when it drew the 1997 particular ones relating to particular incumbents?

A. I don't know the gambit of all the issues, no.

Q. You don't know the House was controlled by the Republicans and Senate controlled by Democrats?

A. That's true, and I know that. How would I say -- I know there was concern with preserving the two African American majority districts. It's evident in the '97 Plan that that concern was met.

Q. You didn't see any concern by the Legislature. The plan was to maintain a partisan 6/6 split?

A. Did not result in a partisan 6/6 split.

Q. Based on the performance data, the districts were supposed to be a 6/6 split, weren't they?

A. That's my understanding, yes.

Q. You looked at all the performance data?

A. Yes.

Q. You looked at the ncec data?

A. Yes.

Q. Wasn't there a democratic performance number for each of the 12 districts?

A. Yes, there is.

[*274] Q. And isn't it also true that based on, say, the NCEC performance data that there would be at least six Democratic districts?

A. I'd have to confirm that, again, because I don't have that in front of me.

Q. So you only cared that two African American incumbents had safe Democratic districts and you didn't bother to look to see if what the Legislature was saying was true, whether or not, in fact, it preserved a 6/6 Democratic split for Democratic incumbents?

A. I can look at it, but I don't have the data in front of me to confirm it.

Q. Since that's the Legislature's -- since what the Legislature is saying, they were drawing districts based on politics, wouldn't you have looked to see if, in fact, that was true?

A. Yes. I can't confirm it for you because I don't have the data in front of me.

Q. But you do remember the racial data. You do remember?

A. That is so stark. It stands right out.

Q. And the political data is not as stark?

A. No.
Q. I thought you said these were very safe districts?
A. There are probably seven or eight that are quite [*275] safe.
Q. Seven or eight are quite safe?
A. Yes.
Q. Are a number of those Republican?
A. Some of them are Republican, yes.
Q. Do you think if the Legislature, if the members of the House thought it was not at least six Republican districts that they would have agreed to the plan? You are a political scientist?
A. Right.
Q. I mean, doesn't common sense say that somebody thought in the House of Representatives of North Carolina that Republicans were to get six districts?
A. I suspect that was the goal, yes, to get six districts.
Q. And as a political scientist, you would say that the Democrats felt they made their best efforts to create six Democratic districts?
A. I doubt whether or not they would say they made the best effort.
Q. As a political scientist --
A. I can only assess it from hindsight now because of what happened in the '98 election. Again, several of those districts were not even drawn in '97, because the '97 12th District and adjacent districts had to be redrawn [*276] so the '98 election was conducted in somewhat different districts in the center Piedmont area of North Carolina.
Q. You keep wanting to talk about District 8. Isn't it true

the incumbent did not run in 1998 in District 8?
A. That's correct.
Q. Did the Legislature, to your knowledge, know when they drew the 1997 Plan the incumbent in the 8th District did not intend to run or would not run?
A. My understanding his announcement came in early January of 1998. I may be wrong by a month or so, but I believe that's when he formally announced he was not going to run.
Q. And since he was running as an incumbent, as a political scientist, do you infer that the Legislature, the Democratic party of the legislature thought that District 8 would remain in Democratic hands?
A. Yes. But that district was not used in 1998. It would be reasonable for them to expect that the district that they drew, which was invalidated as a result of invalidating District 12, might have been a Democratic district.
Q. So then you keep referencing the fact that a Democrat lost in the 8th District, then all of your references that you have been making to the 8th District and the Democrat losing are irrelevant since they don't relate to the 1997 [*277] plan?
A. Well, there were counties of overlap, but there were some counties that were --
Q. I wondered why you kept talking about the Democratic loss in each district, but it was under the 1998 Plan, so it doesn't matter anyway.

You did a number of analyses about the District 1 and 12 to determine that they were safe Democratic districts; is that correct?
A. Yes, but I also looked at participation and took that into

account.

Q. I'm just talking about safe districts.

A. Yes.

Q. You did that?

A. Yes.

Q. And you did not look at the other ten districts yourself. You did not take the same political data and run the same numbers to determine anything about the safeness of the other ten districts; is that correct?

A. That is correct, yes.

Q. Is that because you were only concerned with whether or not the two districts that had African American incumbents were safe?

A. No. It was really a resource issue. It was time and resources.

[*278] Q. Okay. Now, a few moments ago, am I correct in understanding, as a political scientist, I guess, or personally, and you can answer it either way, you disapprove of the general tendency of legislators to create noncompetitive districts?

A. That is as a political scientist, yes.

Q. As a political scientist?

A. Yes.

Q. Is that because you don't believe the country or voters need a lot of safe congressional seats?

A. No. The theory is different. It is to say if voters want to have an opportunity to go to the polls in general elections and technically throw the rascals out, if the rascals have drawn the districts in ways that it's virtually difficult to do that, why should a person vote? You might argue with a person, just don't bother to show up and vote because it won't matter,

particularly if you are in the minority party.

Q. In the real world, the Legislature, this interest in not having -- excuse me, I have my double negatives.

In the real world of the Legislature, they are not interested in having all the seats competitive; isn't that correct?

A. Well, my experience in studying this across the country and having been advising state legislators on [*279] occasion on these issues, I generally observe that politicians want to have safer districts rather than competitive districts.

Q. And that's not anything based on race, is it?

A. Well, race can be used to accomplish that.

Q. But you said that's a general tendency?

A. Whether you are talking to an African American member of the Legislature or white member of the Legislature, when they are talking about their own seats, they are very interested in that when doing congressional districts they take that into account as well.

Q. I believe, consistent with this, when you gave your deposition, you didn't think much of the idea of a legislature maintaining a core of an incumbent's district?

A. Well, if it means that maintaining the core means you are going to ignore race neutral principles, then you have to put aside the notion of preserving the core. Seems to me preimminent is this notion of applying race principles in the area of redistricting. If you don't apply the race principles and you ignore them and they do things like preserve the core history, that's suspect.

Q. For the Legislature, when it is preserving the core of a district, is it also looking at trying not to disrupt the election, the -- is the Legislature looking at not trying to disrupt the

relationship of an incumbent and its [*280] voters?

A. Generally incumbents do not want to disrupt this relationship. Whatever they end up -- whatever districts they end up with, they tend to, in the end, like and wish to preserve as long as they can. That's been an observation over decades and decades of the study of redistricting.

Q. And there are benefits to the incumbent because he knows his voters?

A. Yes, of course.

Q. But they also know their incumbent?

A. But if they happen to be in the minor pattern, they might be marginalized or submerged within a district drawn for partisan of the other party and, in effect, they don't have as much opportunity to throw the rascals out if they want to throw the rascals out.

Q. So preserving the core of the district is something that legislators practice, and it's not necessarily racial at all; isn't that true?

A. That's true. It's practiced every time this occurs.

Q. And that's not only traditional, but probably historical traditional redistricting criteria?

A. It is historical and traditional, but it is not race neutral.

Q. But it's not necessarily racially motivated either, [*281] is it?

A. Not necessarily, no.

Q. Dr. Weber, would it be fair to say that in the redistricting process, you don't really trust leaving redistricting to the legislators?

A. I think that's a conclusion that I have reached and I have said it in my academic writing.

Q. In fact, didn't you tell me that you thought that the best results, what happened in Louisiana and Georgia after their congressional districts were overturned, that they let the federal Judges draw the districts?

A. Yes. The federal Judges in those two states happened to draw what I think are the fairest districts for the 90's.

Q. Now, in your report, you've talked some about the 1980's plan, the congressional redistricting plan?

A. Yes.

Q. I believe you went so far as to say that you felt that that should be the benchmark for looking at the '97 Plan; is that right?

A. It should be the benchmark for all activities in the 1990's until there's a constitutional plan adopted. That was the last constitutional plan.

Q. But isn't it true using the 1980's plan as a benchmark is a little difficult because it only had 11[*282] congressional districts?

A. For the purposes of simply population, it would be a difficult benchmark to follow, but for purposes of assessing the race neutrality of that plan versus the race consciousness or the race predominance of the 90's, it's a very appropriate benchmark.

Q. And isn't it true that the legislator in the 90's -- and this includes in 1997 -- they had to put that 12th District somewhere; isn't that correct?

A. Yes. There has to be a 12th District because population mandates it, yes.

Q. And didn't you tell me previously that the greatest population growth between the 1980's and 90's in North

Carolina was the Triad and Piedmont area from Charlotte to Durham?

A. Yes.

Q. So it makes sense, if you have to put another district in, put it there?

A. Yes. That's exactly what the Legislature did in the 1981 Plan, put a district in the counties between Charlotte and Winston-Salem.

Q. As a matter of population, that's not unconstitutional to put the district there?

A No. At that part of the state at the time, it was a race neutral plan.

[*283] Q. And in 1997, because of the population in that area, it would still make sense to put a district in that Piedmont area?

A. But you do not need to put a district between Charlotte and Greensboro, Winston-Salem.

Q. Well, in 1997, is it necessary to disrupt all the other districts even more? Why not put your Democratic district there?

A. The disruption occurred in 1992 and continued for '94 and '96.

Q. Is there anything unconstitutional that you know of about the desire to put a Democratic district, make a Democratic district the 12th District Democratic?

A. To make it Democratic, no, there's nothing.

Q. And, in fact, the legislature succeeded in keeping and making the 12th District Democratic?

A. Yes, less Democratic than the 1992 Plan, but it is still Democratic.

Q. Well, they had to cure the constitutional defects, didn't they?

A. Yes.

Q. It's not over 50 percent African American district, is it?

A. No.

Q. By putting a Democratic district there, the [*284] legislature was able to meet its goal of maintaining a 6/6 partisan balance in the congressional districts?

A. Alternatively, it could have done as 1991 and put all of Mecklenburg County together as an adjacent area had a marginally --

Q. What would that have done to the Republican in District 9 and Democrat in District 8?

A. You would have a very competitive race with one of them losing their seat.

Q. Wouldn't you say that the incumbents who would be affected by such a plan might have had strong words and concerns with the Legislature?

A. Again, the question is, is it constitutionally -- guess if it's not constitutional then the whole question of incumbent protection has to go away when constitutional questions arise.

Q. Well, Dr. Weber, it's not unconstitutional for a state to draw a districting plan that's balanced 6/6, is it?

A. As long as they do it in a race neutral way and don't support a traditional race neutral principles.

Q. And drawing a 6/6 partisan balanced district would not be a democratic gerrymander, would it?

A. It would be a bipartisan gerrymandering in that sense.

[*285] Q. So -- but you think the Legislature to obey some neutral redistricting principles had to disrupt the Republican in

District 9 and the Democrat in District 8 and draw a different district there. They couldn't draw this district?

A. That's correct, yes.

Q. Now, turning to your Table 6, which is in your Exhibit 47.

A. Yes, ma'am, I'm there.

Q. Did you do an Exhibit 309 that related to those tables or am I in error?

A. I believe Exhibit 309 so related to Defendant's Exhibit 434 or maybe 435 -- no, 435.

Q. Let's look at Table 6, Exhibit 47 starting at page 68.

I think when you testified about this table, you were talking about this shows some Democratic precincts that are not put into District 12; is that correct?

A. Yes.

Q. Okay. Now, this table does not take into account, does it, where any of these precincts are located?

A. No, I have to have the maps to go with this to do that.

Q. When you sat there on the witness stand and added up the number of precincts of Democratic precincts not put in [*286] the district, you did not intend to imply that all of the ones that you listed here that are high-performing Democratic precincts could, in fact, geographically even go in the district?

A. No, I later did that with the maps.

Q. Did you -- in fact, when you looked at the map, did you, in fact, correlate them with the numbers you added up here? Can you take the numbers -- when you added up here, you said there are eight precincts here that are highly Democratic that should have been in. Did you go to the map and find those eight precincts?

A. I went to the map and found the precincts and came back to the tables and looked at the tables.

Q. You found the eight exact precincts?

A. For Forsyth County, I did.

Q. Well, then you did determine that all of those precincts geographically couldn't go in the district, didn't you? If you went and looked at the map, isn't it true that whatever you added up here, you went and looked at the map, you would find all of those numbers you added up could not geographically go into the district?

A. Not all of them, yes.

Q. And you didn't do a chart for us to say how many could or couldn't?

A. No, I didn't.

[*287] Q. You added up numbers, said look at all the Democratic precincts based on the chart that aren't in the district?

A. That's correct.

Q. But nothing to say geographically they could go in the district?

A. No.

That doesn't correlate necessarily with the numbers you were informing the Court about, does it?

A. No. Those were based on the map.

Q. I'm talking about you sat there on the stand and added up, said you go here and add all of these Democratic performing districts. You have x number that are not in the district?

A. That is correct, yes.

Q. All right. Isn't it also true when you look at these tables

and you add them up, say these highly performing Democratic precincts were not put in the district. Isn't it true that you can't fit all of these Democratic performing districts in the district? They would bust one-person, one-vote?

A. You would have to take other precincts out. If you focus on Table 6 on Mecklenburg County, you could put all of Mecklenburg County in one precinct.

Q You don't know whether the Legislature would have to take out a higher Democratic performing precinct just to **[*288]** put in one of these that you thought should go on in?

A. You would have to make a choice which one should go out and you have to do that every time you do this.

Q. That choice could be based on Democratic performance?

A. Could be based on Democratic performance, yes.

Q. Your chart here is showing some higher Democratic precincts were not put in, does not tell you that the decision was based on race, it may have been based on one-person, one-vote?

A. If you look at the rest of the table, all the majority African American precincts are put in District 12, every one of them.

Q. But you already testified those are the most Democratic performing precincts in North Carolina?

A. Yes, they are.

Q. And doesn't it make political sense to put the most Democratic performing precincts into District 12 if you are trying to create a democratic district?

A. You can draw Democratic districts without putting all of the African American majority precincts into the district.

Q. Without disrupting all the Republican incumbents?

A. Yes.

Q. I'm sorry, I don't think I ever saw that plan.

A. As I answered the questions on direct to Mr. Markham, **[*289]** you can take Precinct 877 out and still have a Democratic performing district in Mecklenburg and all the rest of the counties. You can take other African majority precincts out. That's what happened in the 1998 Plan. They took all of Guilford County out and it's still performing Democratic.

Q. What if the direct evidence showed that the south eastern side of Mecklenburg that's in District 9 -- that's connected to District 9 by Precinct 77 -- what if the direct evidence were the incumbent in District 9 would want those precincts in the district?

A. In this hypothetical, we would be taking 77 out of 12 and putting it in 9, so you would have a broader corridor between the eastern part of Mecklenburg County and the western part of Mecklenburg County and you just substitute another Democratic precinct from somewhere else in the precinct to go in 77.

Q. You, of course, have no constraints based on any incumbents or legislator's wishes about how you draw the district, do you?

A. Right. I know this, there's no incumbent who has a residence in Precinct 77. So that would not --

Q. There's not anybody who lives in Precinct 77?

A. Yes. There is, there's a substantial population.

Q. Not the part assigned to District 9, okay?

[*290] A. Yes.

* * *

[*290]Q. Now, Dr. Weber, earlier in your testimony -- or yesterday in your testimony, you referred to Exhibits 265, 266 and 268 I'm not asking you to pull them out, which were thematic maps of Forsyth, Mecklenburg and Guilford County. Do you recall these maps?

A. Yes, ma'am, I do.

Q. You were counting adjacent precincts that you contended should have been included in the 12th District, as I recall?

A. That's correct.

Q. Because they were high performing in that particular election?

A. That one single election, yes.

Q. Your counsel had you look at Joint Exhibit 140 [*291] earlier today. Excuse me, 140. You still have exhibit 140, 141, 142 up there?

A. No, I don't.

Q. Okay.

Ms. Smiley: May I approach the witness, Your Honor?

Judge Thornburg: Yes.

By Ms. Smiley:

Q. If you would look at Joint Exhibit 142. I'm sorry, there may be an index in the front.

A. Yeah. I'm there now, okay.

Q. All right. Now, I believe you testified that what this map shows is the elections in all three results that are on the North Carolina computer system are tabulated, and I believe the data is right behind as part of the exhibit, where that takes each precinct that goes around Mecklenburg County and it

has the election results and the three elections that are on the North Carolina computer data base; is that right?

A. That's correct.

Q. It tallies the data -- tallies up the number of Republican victories; is that correct?

A. That's correct.

Q. And Exhibit 142 is the thematic map showing the Republican victories in the precincts that surround that [*292] portion of Mecklenburg County in District 12; is that correct?

A. That's correct.

Q. And correct me if I'm wrong, but in terms in immediately adjacent precincts it looks like there's only one Democratic performing precinct that immediately abuts District 12 in Mecklenburg County. Is that how you would read this map?

A. Yes. I see one precinct in yellow. It's Charlotte Precinct 10.

Q. And would you infer, because that one precinct is not in District 12, that there's a racial motive about that district line where they put that precinct in the District 12?

A. No. My inference is there were other precincts carried by Harvey Gantt in 1990 against Senator Helms. I would put all of those precincts in there because that's the most recent and best indication of democratic performance for African American candidate in Charlotte Mecklenburg.

Q. If you were trying to recreate a partisan Democratic precinct and not a precinct for African Americans, would you just use the Gantt election?

A Yes, because I'm particularly concerned about the

accuracy of the '88 data for those two races in [*293] Charlotte/Mecklenburg.

Q. But that's your concern about the accuracy for that?

A. That's correct.

Q. In your review of the record and depositions and other things, have you heard that, in fact, the Legislature, when it wanted to look at Democratic performance, tended to look at the Court of Appeals race and the Rand/Smith race because they were more truly indicative of Republican Democratic strength?

A. I don't remember particularly where they said yes it was the '88 race or '90 race. All I know is I have concerns about the reliability of the '88 data. Perhaps those concerns were never expressed to the Legislature.

Q. But do you have any information that the Legislature did not rely on political data in its computer data base because it had the kind of concerns that you had about the data?

A. No, I do not believe they were told those concerns.

Q. But you, in fact -- do you, in fact, know whether or not they used the data that's in the data base with or without the concerns you have?

A. I know it's in the data base and I believe Mr. Cohen, in his deposition, indicated that the data were sometimes used. Now, whether they used it in this part of drawing the district, I don't know.

[*294] Q. Well, you want to draw inferences based on the fact that you think the Legislature should have used that 1990 election. But if that's not what they used, isn't it better to look at all the data that they used?

A. The best data, in my opinion, is the 1990 Senate race. The 1988 races are less reliable.

Q. And that might not comport with the reality over at the Legislature when it was trying to draw districts?

A. I don't know what they did.

Q. Okay. But based on this map it looks like the Mecklenburg County -- they did a pretty good job of finding -- of staying within a city of Republicans?

A. If you accept the accuracy of the 1998 data. If this 1998 data is wrong and these other precincts are Democratic in '88, if you could properly allocate them from the '88 precincts to the '90 precincts, I would be more convinced.

Q. That's the problem with experts and legislators, they use the data that's in the machine.

All right. Now, turning to the other two maps, let's start with Guilford County, which is Exhibit 141. Once again, you do find that there is a strong wall of Republicans going around the vast majority of District 12 in Guilford County?

A. There are four precincts, according to your data, did [*295] not go Republican in these three races.

Q. My question was the vast majority are --

A. Well, the vast majority were the three Republican victories, two Republican and one --

Q. -- there are four precincts that didn't get included?

A. That's right, and there are additional ones adjacent to those. Again, in my map suggested they might have been added as well as even though they are not immediately next to District 12.

Q. But the problem with your thematic maps is it doesn't

take into consideration things like maybe physical boundaries, street boundaries?

A. Neither does this map.

Q. Well, you don't know in effect whether or not these precincts were excluded by a major thoroughfare in Guilford County, do you?

A. No, I don't.

Q. You also don't know if there were other considerations dealing with an incumbent in Guilford County?

A. I can't imagine why a Republican incumbent would want a Democratic precinct; perhaps he did.

Q. If the incumbent was from the city of Greensboro; might he want Greensboro precincts?

A. Equally he would probably want marginally Republican **[*296]** precincts.

Q. Then there's the issue of one-person, one-vote, isn't there?

A. Yes. That's why you take out precincts and put precincts in.

Q. Exhibit 140, the thematic map of Forsyth County, there is a Republican wall. Every one except on the left-hand side of District 12 in Forsyth County; is that correct?

A. Yes.

Mr. Markham: I object to the Republican wall. We said the internal precincts are not colored. I don't believe it's clear whether or not some of the ones in the connector may have voted Republican on all three occasions.

Judge Thornburg: We have no problem with understanding what they are talking about. All right, go

ahead.

By Ms. Smiley:

Q. I believe you pointed quite a bit to these Democratic precincts that were not included in the 12th District?

A. Yes.

Q. Now, do you know of any other reasons in the Legislature, that are not based on this kind of data, why those precincts might not have been put into the 12th **[*297]** District?

A. I remember reading in the record Congressman Burr wanted as many Republicans in his district as possible, since that's his home area.

Q. Do you remember anything about where he lives?

A. No, I don't know precisely where he lives. I think somewhere in the record there's indication of the precincts, perhaps in the stipulations, but I don't know exactly where Congressman Burr lives.

Q. So there might be some nonpolitical and nonracial reasons that explain that group of yellow precincts?

A. He wanted Winston-Salem precincts and he was willing to take Democratic Winston-Salem precincts, even though this was a Democratic plan.

Q. So the Democrats, in order to come to a compromise with the Republicans in the Legislature, didn't get everything they wanted?

A. I don't remember seeing any of the earlier plans that incorporated any of these precincts. I don't believe these precincts were involved in District 12 early in the process of '96 or '97.

Q. One of the real world reality, when you say a

Democratic precinct is not included, there may be factors such as the Democrats couldn't get every Democratic precinct for in dealing with the other?

[*298] A. I don't know that.

Q. That's right. You just can't know that from the data you are looking at?

A. But as a political scientist looking at the data, the best partisan explanation would be to take the partisan precincts.

Q. You referenced the Pildes and Niemi article?

A. Yes, ma'am.

Q. About compactness?

A. Yes.

Q. Isn't it true that Pildes and Niemi, in terms they created these dispersions and compactness measures, and you have an article in here where they compared congressional districts nationwide; is that correct?

A. Yes. They did not create these. These were created by persons at a company called Election Data Systems. They made these available to Pildes and Niemi and also, in some of the discussions, in my report I reference a David Huckabee at the Congressional Research Service. He had the same scores made available to him.

Q. Dr. webster, you read his report and he got numbers like Pildes and Niemi in North Carolina districts?

A. For the old districts, similar numbers, yes.

Q. It's fairly accepted in terms of if you are going to do the mathematical measures of compactness, these are [*299] formulas experts share and people have the data and you share that data?

A. It's generally accepted the two most commonly reported upon are the dispersion and compactness.

Q. Isn't it true Pildes and Niemi established a benchmark for determining whether a district is compact or not under those measures?

A. They suggest there's a score below, which you want to become concerned about the geographical compactness of the congressional districts.

Q. Although they would not conclude just because it fell below that score it was necessarily not compact?

A. No, they suggested it raises the flag. The investigator would want to go into other information and determine what was it that caused the district to be created.

Q. Isn't it true that District 1 is above that benchmark on both perimeter and dispersions measures?

A. Yes, it is.

Q. So Pildes and Niemi would not raise any red flags?

A. For District 1, that's correct.

Q. Now, you talked -- you also showed us an article and looked at the financing of the Republican candidate in the 1998 general election who ran against incumbent Watt?

A. Yes. That was in the Almanac of the American [*300] Politics letter.

Q. You were satisfied he had sufficient finances?

A. The challenger had 381,000 to spend against 687 for Congressman Watt. I think most political scientists would tell you that's a reasonable amount of money. So one could, in fact, spend the money on vote mobilizing and vote persuasion kind of techniques to make them a credible candidate in that race.

Q. Well, you are aware that six Republicans ran in the primary?

A. Yes, I am.

Q. Okay. And you are aware that none of them came even close to 40 percent?

A. Right. It was a very divided Republican Party electorate in the primary.

Q. In fact, did anyone even obtain as much as 25 percent of the vote?

A. I don't remember the precise numbers.

Q. But it was pretty split; the percentages were far below 40 percent?

A. Very divided.

Q. And there was no runoff?

A. That's correct.

Q. Well, wouldn't that indicate to you that perhaps the Republicans were not able to put forth their best

[*301] candidates since they didn't get to have a runoff?

A. Not necessarily. All over the country -- practically every part of the country, except a few southern states, you give the nomination to the person who gets the most votes. So it's common to have less than 50 percent of the vote and be the nominee of the party.

* * *

[*306] Q. All right. In your report, which is exhibit 47, at pages 74 and 75,

A. Yes, ma'am.

Q. You do a discussion about whether or not you can

draw -- whether or not you can create an African American majority district in the area that it encompasses District **[*307]** 1; is that correct?

A. Yes. Begins on page 75, paragraph 73.

Q. But I notice your methodology, when you talk about, I believe it's on paragraph 75, and you said when you group whole counties, when you got those whole counties grouped together, the total population of the African Americans, the most you can make it was 42.91 percent; is that correct? That's on page 77, paragraph 75.

A. Yes. 42.91 percent African American of the total population.

Q. Dr. Weber, did you testify that you have given -- advised legislators about complying with voting rights act issues?

A. Yes.

Q. Is it your testimony to the Court that you would advise a Legislature, in attempting to comply with voting rights act, that if it could not create a majority African American district using whole counties that, in fact, they could forget the voting rights act?

A. I don't remember words to that effect.

Q. You are not then -- then why in the world is your methodology here of using whole counties relevant to any issue of whether or not you can create a majority black precinct in the area encompassing District 1?

A. It's relevant because it's applying race neutral **[*308]** principles and in drawing a constitutional plan to comply with Section 2, one has got to incorporate the two elements. So you are not only talking about compliance with Section 2,

but you have to draw a reasonably exacted language in Gingles of geographically concentrated and sufficiently numerous.

Q. Then you are testifying that a state, if it cannot draw an African American precinct using whole counties, does not have to comply with Section 2 of the Voting Rights Act?

A In this particular case, my analysis suggests there's no reason to believe if you have been sued by Plaintiffs in 1991, '92 because you failed to draw a majority\minor district that you would have lost that lawsuit.

Q. But in your analysis on page 75, you are using whole counties and you say using whole counties you can only get it up to 42.91 percent?

A. That's correct.

Q. So your testimony and your belief is that the State is not -- this state, the State of North Carolina does not have to be concerned with Section 2 of the Voting Rights Act, if using whole counties it cannot create a majority African American district?

A. That's because they are using in two principles.

Q. What makes you say that counties are race neutral **[*309]** principle here in North Carolina?

A. They are political subdivisions. Historical divisions in North Carolina is to keep the counties together.

Q. Are you familiar with various litigation events in North Carolina where the use of whole counties have been struck down? I believe Gingles itself said you couldn't keep counties whole, you can split them?

A. Gingles is about State Senate, State House districts, about multimember districts and I don't dispute that there's a

sufficiently large and geographically concentrated population in certain parts of North Carolina where you can, in fact, meet the first prong of Gingles for State Senate and House districts but you can't for congressional districts.

Q. Isn't it true North Carolina created a number of maps with majority African American districts in the area generally encompassesing District 1 and they have done it by cutting some counties?

A. They have cut some counties. My position is they are not constitutional plans following race and general principles.

* * *

[*311] Q. Dr. Weber, it's not your testimony that it's impossible for North Carolina to have had partisan motivation to create District 12 but still not include every possible Democratic precinct in its borders, is it?

A. No. Because as I responded to Ms. Smiley, there might be some Democratic precincts in say the six counties of the 12th district you couldn't get in there because they are too far afield from the abutting line.

Q. And, in fact, in your opinion, congressional Districts 1 and 12 are already overly safe districts, even without those additional Democratic precincts?

A Yes. Again, in the 1997 Plan, yes.

Q. Dr. Weber, if you -- Dr. Weber, in examining Plan '97, the 1997 Plan, you had testified before, I believe, that there were Democratic precincts in District 12 that you would or could perhaps move to District 8. Do you recall testifying to

that?

A. Yes, I do.

Q. Let me ask you: in order to do that, if you look at the map there, in order to move precincts from Mecklenburg County, for example, or actually if you want to move it from Mecklenburg County to District 8, wouldn't you have to cross Mecklenburg County in order to do that from District 8 or actually --

A. No. If you are going to add a portion of Mecklenburg **[*312]** County to District 8, then you would have to swap some population from District 8 into, say, District 9 or District 12.

Q. Actually, my question was: if you were going to move precincts that are currently in District 12 that are in Mecklenburg County and move those precincts into District 8, wouldn't you have to cut or actually move into or cross Mecklenburg County line?

A. Yes, you would have to do that.

Q. Wouldn't that result in a three way county split, as it is presently configured?

A. Yes.

Q. Looking on Table 7 in your report, which is Exhibit 47?

A. Can you help me with the page number?

Q. Page 80.

A. Thank you.

Q. Do you have it there?

A. Yes, I do.

Q. Now, in this table you are comparing white and African American participation; is that correct?

A. Yes, in the Democratic primary of the Democratic runoff primary.

Q. All right. Now, in North Carolina you are aware that only Democrats and unaffiliated voters can participate in **[*313]** a Democratic primary?

A. That's correct.

Q. So Republicans are not eligible to participate in the Democratic primary?

A. That's correct.

Q. Looking on Table 7, the participation percentages you list there under the African American column, for example?

A. Right.

Q. Those African American percentages are registered voters, almost all of whom are eligible to vote in the Democratic primary?

A. Yes.

Q. And looking at the white percentages, those would be percentages of white registered voters but would include numbers -- voters -- include in those percentages voters that might be republicans and, therefore, ineligible to vote; is that correct?

A. Yes, some.

Q. So, for example, on page seven, the very bottom there, 1998 Congressional District 12 U. S. Congress under white participation?

A. Right.

Q. The .025 number that would be a portion of all white nonproportion of all white voters eligible to participate in the primary?

[*314] A. That is correct.

Q. So this analysis that you lay out in table 12 doesn't give you a comparison of participation between white Democrats

and African American Democrats, does it?

A. That's correct.

Q. As a result, your conclusion regarding participation rates between African Americans and whites, by including Republicans, white Republicans who are not eligible to vote, your results are artificially deflated with regard to white voters and African American participation?

A. If we could, in fact, separate out the white Republican voters from the white Democratic voters, each of the participation estimates would be higher for the white participation rates. They would be not much higher for the first congressional district because they have a high percentage of white Democrats in the First Congressional District who participated in the Democratic primary. You would have a more severe effect in the 12th District.

Q. So these are artificially deflated vis-a-vis African American participation; is that correct?

A. Particularly for District 12.

Q. In your report, which is Exhibit 47 on page 89, paragraph five --

A. Yes.

[*315] Q. -- you mention that African American voters residing in District 1 and 12 in the 1997 Plan do not participate in lower rates than white voters in recent Democratic primary runoff elections, indicating any evidence that history or official discrimination has any lingering effects that would impact voter registration?

A. That's correct.

Q. Looking at the results of your participation analysis, that does not tell us that the lingering effects of past official

discrimination, in fact, no longer exist; is that correct?

A. I believe that is the case. They no longer exist in the state of North Carolina.

Q. But can you base that conclusion upon your analysis of the participation rates that we have outlined in Table Seven?

A. Yes, they are not, if there are lingering effects of discrimination. They are not meaningful for participation. They might be meaningful for other aspects of life in North Carolina, but not meaningful for political participation.

Q. I didn't ask you if they were politically significant or meaningful. Looking at your results from Table Seven. Based on your analysis of the Democratic primaries, you can infer, given your errors, you actually deflated the **[*316]** white participation?

A. I don't believe that I have deflated those numbers significantly, so white participation in the Democratic primary would be higher than African American participation.

Q. But you don't really know, do you?

A. I have a pretty good idea of what percent of the whites in District 12, for example, are Republican and I could -- in fact, with a calculator, I could quickly do that.

Q. Dr. Weber, given the information that you had when you calculated these participation rates, you had no way to factor out by race and by party the number of white Republicans who are stated in that race?

A. No way I could.

Q. You could not?

A. No, analyst can do that.

Q. So I'm correct, you could not do that?

A. Correct.

Q. You could not infer from that information with certainty lingering effects of official discrimination have been removed using the Democratic primary participation analysis you laid out in Table Seven; is that correct?

A. Yes, sir. I disagree with your premise. I believe **[*317]** that based upon any adjustment that I would make of these data, if I could, in fact, accurately estimate white participation rates in the Democratic primary, you would still see African American participation being higher on the average than white participation, whether or not whether we're talking about District 1 or 12.

Q. My question was: you can not, using the analysis you laid on table seven, with certainty testify that the lingering effects of the official discrimination have been removed based upon the analysis you have done in Table Seven?

A. Yes, I believe it is, with certainty.

Q. So the answer to my question is yes, you can, with certainty, based on your analysis, tell this court the lingering effects have been removed?

A. Yes.

Q. Based on your analysis of general elections, you testified there are no party -- where there are no party restrictions and all the white voters are eligible to vote, you concluded that black participation was actually lower; is that correct?

A. Yes, tends to be lower.

Q. And your evidence in the primary is not consistent with that evidence; is that correct, given to errors or given the deflation of white participation; isn't that **[*318]** correct?

A. I didn't understand the question.

Q. Given the deflation of the white participation in the primary election, given that you did not factor out white Republicans, the evidence -- your conclusions from that may not be inconsistent with your conclusions from the general elections; is that correct?

A. I believe they are inconsistent. I believe that white participation is lower in the Democratic primary than African American participation.

Q. But you can not verify that with certainty. You could not factor out white Republican participation in the Democratic primary; is that correct?

A. I know approximately what percentage of District 12 is white Republican. I know what percentage of District 1 is white Republican, and if I do that, I do not believe that I take away the difference. It narrows the difference. It might in one or two elections make the white number slightly higher than the African American number. As a general picture, I don't believe we will always be higher white than African American.

A. In table 9 in your report, Dr. Weber, Exhibit 47, you have estimates of white cross-over rates in North Carolina?

A. Yes.

[*319] Q. And looking at that table, those rates range from a low of 17.9 percent to high of 46.2 percent?

A. Yes.

Q. In table ten you lay out the rates; you analyzed the congressional races?

A. Yes, sir. These are the two elections held in the plan in District 1 and 12 in 1988.

Q. That, though, shows Representative Clayton received 32.4 and Watt received 32.6 percent?

A. That's correct.

Q. As a social scientist, you are familiar with the levels of white cross-over, the Supreme Court analysis found in the gingles case; is that correct? You recall what the ranges are?

A. I remember vaguely. You would have to show me the exhibit to remind me. I remember there was an exhibit in the opinion.

Mr. Cox: May I approach, Your Honor?

Judge Thornburg: Yes.

By Mr. Cox:

Q. Dr. Weber, I've handed you the Gingles opinion and the appendix to that opinion actually lays out the amount of voting support the candidates received in the districts that the Court analyzed in that case. See where I am?

A. Yes.

[*320] Q. Of the Appendix A. Now, looking at that appendix, the levels of white cross-over in the districts which the Supreme Court find both dilution in gingles ranged from 20 percent to a high of 46 percent?

A. Say that again.

Q. The range of white cross-over the Supreme Court found in the districts in which it found vote dilution ranged from a low of 28 percent to high of 46 percent?

A. Are we looking at primary or general?

Q. General elections.

A. From District 36, District 36 there's a white cross-over in 1980 of 28 percent for someone named Maxwell. And I see a 46 percent -- well, I see a 49 percent in District 23 in 1980, Mr. Spaulding.

Q. In District 23, they didn't find dilution?

A. That's correct.

Q. Of the districts when they found dilution, I'm not talking of those districts. That would be Districts 22, 21, 36 and 39?

A. Yes.

Q. And considering that range, those ranges are comparable to the ranges that you found in your analysis for this case in terms of white cross-over, isn't it?

A. Yes.

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[*334] A. Well, I read the opinion in *Shaw versus Hunt*, and the first thing that we needed to do was to cure the constitutional defects in the 1992 Plan. So that was the first consideration. And I think in general that meant making the plan look a lot nicer; and secondly, to make certain that race was not the predominate factor in drawing the districts. And in making the districts look a lot nicer, we needed to make sure we didn't split precincts, try to split fewer counties, make sure you didn't have one county with three members of congress. Making sure you didn't have long narrow corridors where you didn't have any people. Making sure you didn't have the double-cross overs and cross overs and point contiguity and all of these concerns that were pointed out by the court.

Q. Before you go onto the second goal, was there any feeling on your part or the leadership of the Senate not to create and draw a constitutional plan?

A. No. We wanted to make sure that the plan was constitutional.

Q. Would you prefer not to be back in court again?

A. Most definitely.

Q. What was the other one?

A. The other concern was we wanted to make sure that the legislature drew this plan and not the federal courts.

[*335] Q. With all due respect to the federal courts?

A. With all due respect to the federal courts, yes.

Q. But?

A. But we felt it was our responsibility and we didn't want to delegate that authority. We knew we had a real problem

with that and the Senate was majority Democratic and the House majority Republican and we knew if we had a plan that was too partisan one way or the other that you would never get enough votes in the chamber that was getting the short end of the stick.

Q. If I might interrupt you for a moment. In 1996, what occurred with respect to the incumbents, the congressional delegation for North Carolina?

A. With the 1996 election, there were we ended -- up with a delegation of six Democrats and six Republicans after the election.

Q. I'm sorry to interrupt you.

A. We knew that would be important because the bottom line was to make sure we had 26 votes in the Senate and 61 votes in the House to pass the plan and there are many considerations that you have to take under consideration when you try to do that.

Q. And in terms of gaining votes, do you look after the interest of incumbents?

A. That was a consideration and the reason it's a **[*336]** consideration is that incumbents are in office, they have a constituency. They have people who advocate for them in the General Assembly. Oftentimes they have close relations with legislators, and so incumbents can affect votes in the General Assembly.

And although it would be nice to draw these districts in a vaccuum and to make them look nice and to completely ignore partisan politics and completely ignore who's the incumbent, I'd like to find a way to do that. But in order to get votes in the General Assembly, to get a plan passed, you can't

do that and you have to take into consideration what incumbents think about the plan.

Judge Boyle: Let me interrupt for a second. Don't lose your train of thought. As a benchmark, the congressional delegation is now seven, five Republican in the '98 election. In the 1996 election, it was 6/6, even. In the '94 election, it was 8/4 Republican. And in the '92 election, it was 4/8, Republican, Democrat; is that correct?

Ms. Smiley: That's how I recall. Perhaps Senator you may know.

The Witness: That's right.

Judge Boyle: So since redistricting in '91, 2 with the '92 Plan, North Carolina has gone 8/4 Democrat, 8/4 Republican, 6/6 and now 7/5 in the four succeeding **[*337]** congressional elections.

The Witness: Yes, sir.

Judge Boyle: All right.

The Witness: And that's one reason you never can predict. I mean, that's ultimately these elections are up to the people and it's very difficult to predict, although we did spend quite a bit of time looking at election results because we knew that the partisan fairness of the plan would be an overriding factor in trying to get a plan with a majority of votes in both chambers. So we had to pay attention to that, although you can never predict exactly.

By Ms. Smiley:

Q. Well, looking at the partisan balance over this decade that Judge Boyle has just refreshed our recollection with, was 1996, was that a windows opportunity when you did have the redistricting at that time there was a balance?

A. I'm not sure that we could have gotten a plan through the General Assembly had there not been a 6/6 split because eventually we settled on that as a fair proposition. It was a fair proposition to the public. It was fair to the legislators. I think you have a lot of Democrats in the Senate who would have wanted to draw the plan to favor Democrats and Republicans in the House.

[*338] One wanted to draw the plan to favor Republicans and this situation that we had already with the 6/6 split made it a very convenient way to have a plan that was fair in a partisan manner. So Representative McMahan and I decided early on and the leadership of both the House and Senate decided early on we needed to strive toward a plan that was a fair 6/6 partisan split.

Now, what that was, and the definition of that was subject of great debate, but we ended up with a plan that I think was fair.

Q. All right. Now, we were talking about the accommodation of incumbents, and accommodating incumbents also meant votes in the legislature. As a general matter, do you have to look at the interest of legislators?

A. Yes, you do. Legislators live in congressional districts. Many times their constituents have been in a congressional district for a long time. They have certain interests that they want to see a congressional district drawn a certain way, so almost every legislator in the General Assembly has an opinion, particularly in his or her own home area about how a district should be drawn.

Q. And do sometimes the different interests of legislators, incumbents conflict?

A. Sometimes they do.

Q. And do they sometimes conflict with the goal of **[*339]** having a 6/6 split?

A. Yes, they do.

Q. Would they sometimes conflict with having a preplan or constitutional plan?

A. Most definitely, yes.

Q. But you have to garner votes?

A. We had to put all of this together and make sure we met all of the tests that the Court laid out for us.

Q. So you might not be able to do some accommodation if you could not create a plan that would be constitutional?

A. Repeat the question, sorry.

Q. Some accommodation might not be made things that people wanted?

A. Yes.

Q. Because it might make the plan vulnerable?

A. Yes. There were requests made that I thought would have made the plan unconstitutional and we just couldn't do it.

Q. Now, the mechanics of the redistricting process itself, did you yourself manipulate the calculations?

A. I did not. I was not in the room and I would give instructions to a person who normally would do the actual mechanical calculations. And most of the time that was Gerry Cohen.

Q. Were you in the room or often allow him to do his **[*340]** work while you were not there?

A. Often allowed him to do his work while I was not there, just on general instructions, yes.

Q. What were the kind of instructions you would give him or what was your working relationship with Mr. Cohen?

A. Gerry is maybe more familiar with maps and precincts and make up and Democratic performance and Republican performance than anybody in the state. He has been working with this for such a long time. I would give him a general idea of what I wanted to do. I would say move a certain county into a certain district or I would just talk to him conceptually about a problem that a legislator would have and would say we need to do something to try to fix this.

Q. Would he ever come back to you with ways he thought that could be accommodated?

A. Yes, he would.

Q. Did you work with other legislators?

A. Yes, I did.

Q. And did you see a lot of plans?

A. Yes. We saw a lot of plans. Many plans were submitted and people had a lot of different ideas about what we ought to do.

Q. Okay. With respect to other legislators, how did you handle the process of getting their input and making sure **[*341]** that you could get your votes?

A. Well, I talked to individual legislators. I told them that if you have ideas, let me know. I did have legislators that would bring plans into the office. Many times they would draw their own district without thinking about the other 11 districts in the state and that would sometimes cause a problem because everything is inter-related, but we had legislators who would draw their own plans and bring them in we would look at that.

We held a public hearing. We let input in from the public. We had discussions, suggestions from the public on what we ought to do.

Judge Boyle: When you say "legislators," you are talking of members of the General Assembly, not members of congress?

The Witness: But members of congress also gave us their ideas.

Judge Boyle: That's what it sounded like. They would come in with a district of their own, not taking into account other districts?

The Witness: That's correct, but we had plans from other state legislators who had interests in this issue they want present us with plans as well as members of congress.

By Ms. Smiley:

[*342] Q. So he might be interested himself in possibly running for office or he's the incumbent?

A. Yes.

Q. I won't make you elaborate on that. My next question, which Judge Boyle has anticipated, is could you describe as well as you can remember the input that you had in your consultation with congress persons or their aides?

A. I think that I talked to every member of congress or his or her representative except for Congressman Taylor in this process.

Q. And is his district really in play?

A. His district is the 11th, the far west, and we did very little to that district and no, that district really was not -- pretty much everybody agreed that we ought to straighten up the line a little bit to make it look a little nicer but it was not

significantly debated. So I didn't really have occasion to talk to him or any of his staff and he didn't ever contact me. But I did have contact with all of the others, I believe.

Q. And to the extent that you can remember the kind of contact that you had or when in the process?

A. Talked on the telephone, we had one meeting in Raleigh of Democratic members of congress wherein they came to Raleigh and I presented them with some ideas and **[*343]** they presented me with some ideas but most of it was by phone. Some of the members of congress came individually on separate occasions and talked with me.

Many of them, as the judge said, were drawing their own plans and submitting them to me. I think when we had that meeting is when I showed them some of my ideas and so they started working off of that and giving me ideas or suggestions. I think the general idea was many of them wanted to keep a lot of the constituents that they already had because they had a lot of time invested in talking with them and representing them and many of them wanted to do that.

Q. And at that point in time when you started presenting plans or ideas, at least to the delegation, do you remember what the main outline of the plan or what you showed them?

A. It was probably pretty close to what I presented to the Senate committee. I think it was in February sometime.

Q. Before we go there then, let's step back a little. All right. You were talking to legislators and congress people. Did you begin talking with Representative McMahan?

A. Yes.

Q. Could you say when and kind of give us a little **[*344]** history of your discussions with him in the early time before you started negotiating your plans?

A. Very early in the process Representative McMahan and I agreed that we would keep an open dialogue and that we would try to come up with a plan to present to both sides that we both agreed on. So we began discussing principles. We talked about the 6/6 split and wanting to stick to that principle. We talked about making sure that we kept our lines of communication open and we began the process of presenting plans back and forth to each other for each other's consideration.

Q. Was there initial issue based on the plan that the Republicans had presented in the summer of 1996; do you recall where the 12th District was in that plan?

A. Is this the plan that the 12th District ran from Mecklenburg down across the south east to Robeson County?

Q. Yes. And is that an issue you talked with Representative McMahan early on about that?

A. I told him that was just completely unacceptable and that plan would never pass the Democratic Senate.

Q. Was that early in the process?

A. Yes, that was fairly early in the process.

Q. Why?

A. For one thing, probably most importantly, there would be members of the Senate that would think the plan was **[*345]** very much unfair on a partisan basis, because it would have resulted in an 8 to 4 Republican partisan split. And I suspect that was the motivation behind it being presented --

Q. Did it disrupt a good number of Democratic districts in the southern part of the state, south central part of the state?

A. Yes it did.

Q. Okay. So that was one of the early issues you did discuss with Representative McMahan?

A. That's correct.

Q. How did you all resolve that at that time or how did you leave it, when you said that was no go?

A. He pretty much gave up on that pretty early. There were other members of the legislature who wanted to do that for what I believe to be partisan reasons. He understood -- he was being practical, as I was. There were plans out there that would have resulted in a strong Democratic leaning map, and I knew early that this was not going to be a practical solution to the problem so we both understood that and he gave up on that pretty early in the process.

Judge Thornburg: I think this is a good point to break and, Senator, we will start back at 2 o'clock.

(Lunch recess taken.)

[*346] (Witness, Roy Cooper, returns to the witness stand).

Judge Thornburg: You may proceed.

By Ms. Smiley:

Q. Senator, moving farther into the world of redistricting, could you tell us a little bit about the data bases in the computer system and how you used them and, obviously, not a technical answer from you, but --

A. There was data in the computer from 1988 when we had redistricted for 1999 -- excuse me, for the 1990 Census. There was data from election results in 1998 that went into the computer in addition to other demographic information. We

used that same information that was from the 1990 Census for redrawing these maps for 1997. There were election results. I think there was a Lieutenant Governors race, a Supreme Court or Superior Court Judges race and a U.S. Senate race that was from 1988 that was in the computer.

Q. What information did you find most useful in looking at District 12?

A. The election results were the predominate number that we looked at in all of the districts. We even had some supplemental election results that we used, but with this overriding issue concerning 6/6 partisan split, the election results were the most predominate numbers. In fact, when we were using the maps, that was generally the **[*347]** number that was up on the screen.

Q. Do you recall which election you felt gave the best indication of Democratic\Republican?

A. That's difficult to say. Probably that judge's race gave the best generic indication, but still that was older data, that was 1988 data. And although it was somewhat useful, it wasn't the primary election information that we used.

Q. What was the primary?

A. The primary information was election results that we received from an organization called the National Committee for an Effective Congress, which was an organization that I think was primarily funded by the National Democratic Party. It's primary function was to help elect Democratic members of congress across the nation and to specifically help with states that were doing congressional redistricting.

Q. And how would you go about getting that information from them?

A. We had a computer link up with our General Assembly map makers with the committee in Washington and whenever there was a map that we wanted to look at their analysis of the map we would send it up electronically and they would send back information to us, giving us election results and telling us what the Democratic performance of **[*348]** the district would be.

Q. And was that data more current than what you had?

A. Yes, it took into account several elections from 1990 to 1996 and the state computer data base only had the 1988 election results.

Q. And was there a particular column that you used on the NCEC data?

A. There was a column that was an inclusive cumulative performance number that they came up with taking into account all of these elections, and they called it a Democratic performance number. So, for example, if you had a 55 percent Democratic performance, then that would be very good. Below 50 would be of concern.

* * *

[*349] A. Well, the primary concern was to address, as I've testified earlier, the constitutional problems that were cited by the Supreme Court in *Shaw v Hunt*, so that turned us to the 12th Congressional Districts because that specifically was the district that was unconstitutional. The Court had real problems with the long narrow corridors without people, splitting of precincts, point contiguity, crossovers, double-crossovers.

We set out to eliminate all of those problems that they had specifically pointed out in the decision. And **[*350]** also we wanted to make certain that race was not the predominate factor, which is what the Court said that we could not do.

So I began by taking that into account. We also had the practical problem of getting a plan that was passed. So we took the core of all 12 districts, the general area of all 12 districts and began our redistricting process. And I would say that we probably made the most dramatic changes in both the 12th and the 1st Districts from the old map because of the problems that were cited by the Court in *Shaw v Hunt*.

Q. When you talk about the core, what does a core mean to you? Are you talking about the African American core?

A. No. The geographic core, the area the constituents that were in the previous congressional district. If you had started from square one with people who were already in a congressional district with members of congress that already represented areas. If you started at square one, I just don't think we could have drawn a plan that would have passed muster. Even from census to census, most of the time there's a geographic core of the previous district that you start with, so this was really no different than coming from another census, except for the fact that we had the Supreme Court decision that we wanted to address and feel we did address.

[*351] Judge Boyle: Were the changes more substantial in the First and Third than in the 12th, or can you say?

The Witness: I think the 12th was probably as dramatic a change as any that we did. If you look at the map starting in Gastonia with a thin line all the way to Durham, we cut the area of that district almost in half -- excuse me, the length, and

significantly broadened it. So I would say the First and the 12th were the two most dramatic changes. There were some changes to the Third. There were some changes to all of them actually, but I think the First and the 12th were the most dramatic because of the constitutional concerns that were raised by the Supreme Court.

* * *

[*352] A. No, we made dramatic changes to the 12th. We took four, I guess it was four, of the counties that were in it before completely out of it.

Judge Boyle: What was your reason for not taking Guilford out of it as you did later in the '98 Plan?

The Witness: Well, your Honor, when you get back to looking at the partisan nature of what we were trying to do, it was a fact that the 12th District was surrounded by Republican leaning districts. And when you looked at Guilford, it made everyone happy from a political standpoint to take the Democratic leaning voters in Guilford and put them in the 12th because it made the 12th a much stronger Democratic district and it made the Sixth District, Congressman Coble's District, much more Republican, which made him happy.

And in addition, there was a geographic symmetry to putting the Triad altogether and making sure that Greensboro, Winston-Salem, High Point, the Triad, was all [*353] covered by the 12th. That was connected with Mecklenburg and it was, we thought, I think the third shortest district in the whole state and we thought it made geographic sense to do that.

By Ms. Smiley:

Q. If we may back up a little bit. We jumped a little ahead. Had you and Representative McMahan had any discussions and come to any agreement as you were working on the Senate Plan about the 12th?

A. We came to an agreement that it would go from Mecklenburg to a point in the Triad fairly early on, that that's what we wanted to do. All the members of congress were okay with that. We thought it met the constitutional test because we were cutting off large areas that didn't look nice and we knew that that was going to be a Democratic leaning district. So we decided that the only issue was where we went.

Did we go to Forsyth only, did we go to Guilford only, did we go to Forsyth and High Point, did we go to Forsyth, High Point and Greensboro? We came to the conclusion it made sense to connect them altogether and it made sense to keep the Triad together and it made sense from a partisan perspective that made the 12th more strongly Democratic and made the 6th more strongly Republican, making everyone happy. Getting back to my [*354] earlier statement, the people that decide these elections, but we were trying to get a plan that passed and these members of the legislature are looking very carefully at elections and election results, and we were trying to get enough votes to get this plan passed.

Q. Do you recall that at some point there may have only went to High Point?

A. Yes.

Q. At some point you decided to go all the way into Greensboro?

A. Yes.

Q. When that decision was made -- and have you just explained some of the reasons why you made that decision to go to Greensboro?

A. Yes. I mean, it just made sense and it was -- I don't want to be as cavalier as to say "why not," but I mean, it didn't make a whole lot of sense just not -- just to go into Forsyth or just only to go into High Point.

Q. Where could you put those Greensboro Democrats if you don't go --

A. They would natural naturally fall into the 6th District.

Judge Boyle: Is that where they are in the '98 Plan?

The witness: Yes.

* * *

[*356] When you made a decision to go to Greensboro, did you give any instruction to Mr. Cohen or anyone to go to Greensboro and get the blacks or get the black community?

A. No, I did not. I would not have given that type of instruction because that's not the mindset that I had.

Q. And what, in fact, was put into the district, was it just black precincts; if you know?

A. They were mostly Democratic leaning precincts, Democratic voting precincts.

Q. Do you know if most of them were African American?

A. I can not remember and I specifically did not go through and try to remember technically about all of these maps and I can not remember whether there was a majority of African Americans or not. It is obviously a substantial number

of African Americans that were in those strongly Democratic leaning districts.

Q. Were there a majority of white precincts from Greensboro that also went into the district?

[*357] A. There were majority white precincts there also. I can't tell you precisely how many. There were a majority of white precincts, but most are all Democratic leaning precincts.

Q. No point in putting them in if they weren't Democratic leaning?

A. Like I say, we were trying to strike this partisan balance. That's not very pretty, but that's the kind of thing that has to happen to get votes.

Q. When you went to Greensboro and the plan extended to Greensboro, were you attempting in any way to achieve a particular racial percentage in the district?

Mr. Everett: Objection, leading.

Judge Thornburg: Overruled.

A. No, we were not. I would say that the fact that it did, the number did go up, that that was fine with me and that was fine with a lot of people who wanted to support Congressman Watt and wanted to make certain that there was incumbent protection, but that was not the primary motive by far. And we did not have a set percentage that we were looking for because specifically the Court told us not to do that, so we didn't do that.

Q. And as ancillary benefit, do you have any idea whether Congressman Coble was satisfied with what happened to Greensboro?

[*358] A. It is my understanding that he was happy with what we did.

Q. All right.

A. Because it increased the Republican performance of his district.

Q. Now, with respect to District 1, when you were at this point you were working on the Senate Plan, do you recall what some of the issues were and what you were thinking about in the eastern part of the state in the District 1 area?

A. Well, I think all of the issues that I talked about in the 12th would be transferred to the First as well. Although the Court had not specifically overturned the First District, we knew that from the way that the map was drawn and, his Honor showed us, talked about down in southeast, we knew we had to do something about that to avoid a constitutional problem with the First District.

So we looked at the core of the district, which was northeastern North Carolina, and we drew a district that I think complies with all of the issues that we had to deal with. We had to deal with the constitutional issue of making sure that race was not the predominate factor and making sure it looked nice.

But also we had some other evidence presented to us, in the redistricting committee, concerning the Voting **[*359]** Rights Act and the fact that there had been some past patterns of discriminatory voting in northeastern North Carolina, that you had a large concentration of African Americans living in the northeastern part of the state and that we should have a majority/minority district in the First, which we did.

Q. I believe -- excuse me, Senator, Exhibit 125, I believe is a map that shows the African American concentration in that area?

A. Yes, uh-huh.

Q. Now, could you -- what does that map illustrate?

A. I think this illustrates that there are numerous counties in northeastern North Carolina that have a high percentage of African American population and that we simply use that core to create the First District. When we first started doing this, I was a little unsure as to whether we could draw a majority/minority district that met the test in *Shaw v. Hunt* and looked nice, but as we went through the process it became pretty clear that we could draw a nice compact district that made geographic sense, that put together communities of interest, that was a strongly leaning Democratic district, that was slightly majority/minority population.

Q. - I believe you have in your witness notebook an Exhibit 104, which was the plan that the Senate came out **[*360]** with?

A. I believe that's the plan that I initially presented to the Senate.

Q. And ultimately became the plan that the Senate passed and negotiated with the House?

A. Yes.

Q. Okay. And is that District 1 more compact, possibly than the District 1 in the enacted plan?

A. Yeah. I think we did a little better job than the plan we eventually came up with, but so much of the end of the process to do with the Fourth, the Second, and the Third Districts concerning the partisan nature of those districts, that we had to change parts of the First District in order to accommodate those concerns in order to get a plan to pass. So it evolved from what this plan is now to the plan that we ended up with that I don't

think looks quite as nice and compact as this, but I think it's certainly does the job.

Q. Is the District 1, in your Exhibit 104, is that the district that says to you that you can draw a compact African American district and that's why you need to?

A. I would say yes.

* * *

[*362] Q. Briefly, to give the Court a flavor of some of the things you were dealing with.

A. District 2 obviously was a swing district, a hop up district. You just had the election between Congressman **[*363]** Etheridge and Congressman Thunderburk and the parts and nature of that district was of concern to legislators and the public and people were weighing in on that.

Q. And you had a freshman Democratic congressman in that district?

A. Yes, we did. And the same for the Third Congressional District. Congressman Jones represented that district and he was really the only Republican in the east and Representative McMahan, I think, although he never specifically told me what the conversations were going on, I could see from his actions that he was certainly trying to protect the only Republican congressman that was in the eastern part of the state and that came into the negotiations.

* * *

[*364] Q. Did various concerns with 2, 7 and 4 impact on 1, the shape in terms of where 1 --

A. Yes. Any time you dealt with a problem in those districts, since it is adjacent to 1, the First District, oftentimes you had to move some precincts or move a county. So you had to keep an eye on what was happening with 1 because it all works together, it's a chain reaction.

Q. So whatever you might have wanted to do with 1 or 3, you had to look at all the districts?

A. Yes. Because when you move population out of or into a district, you have to go and make it up somewhere else because we're dealing with 552,000 some odd people that we had to draw and these districts had to keep it under a 1,000 people difference. With the ultimate plan, you have to go right down to the person. So keeping population **[*365]** even was always a challenge when you had to go and try to fix one problem, you sometimes would create another problem in fixing a problem that you had.

Q. In ultimately drawing District 1, what consideration was given to race?

A. We felt that it was important to have a majority/minority district. Once we found out that you could draw one that met the test of *Shaw v. Hunt*. So from that standpoint, we did pay attention to race to have a majority/minority district.

Q. Now, in the First District was there any particular percentage that you were looking at and that you were talking about?

A. We wanted to have over -- at some point over 50 percent of the population.

Q. Why was that?

A. Just as I testified to earlier, there is a large concentration of African Americans who live in northeastern North Carolina. We felt that the Voting Rights Act would require if there was evidence that was presented to the committee about past patterns of discrimination and it's just the right thing to do, we could do it easily and draw a nice district, and we did it.

* * *

[*368] A. District 1 is a largely agrarian rural district. It has a lot of medium sized towns. I think uniquely eastern North Carolina you have the 30 to 50,000 population towns with largely rural areas. A lot of those counties are largely poorer counties, they are very high up on our economic tiers of depressed counties, so I think that there's a great community of interest in northeastern North Carolina with those counties that are up there.

* * *

[*369] A. I met with a group of largely African American constituents, Senator Jeannie Lucas, who represents Durham. I met with them and talked with them a great deal and they very much wanted to remain in the 12th. They very much wanted to remain in Congressman Watt's District 6 because they -- they were satisfied with his representation. It was a largely urban district with the same type of issues that urban Durham has. And we talked and looked at the *Shaw v. Hunt* case, and there was just no way the Court would have accepted a move to the

12th going all the way to Durham County. That just would not work.

Q. What about putting it in the First District?

A. It was discussed, but there was just too much disparity of interest there. I don't think that Durham has a lot of interests that are the same as the agrarian rural northeastern counties and I don't think particularly that the group of people, Senator Lucas, people that I was talking to, very much wanted to be in the First District.

In addition, if you went down and got those precincts in Durham County that had been in Congressman Watt's old district, I think maybe you may have run into a constitutional problem with the First District in reaching out that far. And, also, if you did that, that created a partisan problem for the Fourth District.

Q. What was that problem?

[*370] A. That was a district that was leaning Democratic and if you went and took those Democratic votes out of the Fourth District then you had a problem with the Fourth District no longer necessarily being Democratic leaning. So for all of those reasons, we didn't do that.

* * *

[*372] Q. And can you remember right offhand what were the biggest fights that you had to deal with negotiating to your final plan?

A. Probably the biggest fight was the partisan nature of the 2nd and the 3rd. There were lots of other problems that arose, for example, in trying to shore up the 8th District. The idea

was to move east and there were concerns from Congressman McIntyre that he didn't want the 8th District coming too far into Robeson County. The Lumbee Indians were concerned about being removed from the 7th and going back to the 8th or going into the 8th. And those were problems that we had during the process, but those eventually were ironed out.

Q. Were there immediate problems with District 3 when you and Representative McMahan started negotiating?

A. Yes, there were some problems with District 3. They didn't like the way we had drawn District 3. We didn't particularly like the way they had drawn District 3, but I think we ended up more toward their idea of what District 3 ought to be than our plan.

Q. Now, do you recall one of the easily decided the hottest issues when your plan first came out about District 3 had to do with the incumbent?

A. Well, you mean Walter Jones, Congressman Walter Jones, District 3? The House made certain that he has to [*373] be in the 3rd District. His home was in actually the First Congressional District under the '92 Plan and he got elected to the 3rd District anyway, but had received some criticism because he didn't live in the district and that was an important point that Representative McMahan made to me, that they needed to make sure that Congressman Jones resided in the 3rd District.

Judge Boyle: So that incursion that runs in north, west, southeast corridor up into Pitt, to Farmville all is the product of providing a residence for the incumbent?

The Witness: That's how we got there, yes, because his home is somewhere there toward the end of the line. I don't

know specifically where his home is. I just know that was an issue and that was -- that's how we had to get up -- he lives in Farmville.

* * *

[*374] Judge Boyle: So if you had devoted all of Pitt and all of Craven -- not all of Craven, but the contiguous part of Craven to the First, you'd have cohesive, geographically cohesive district, but you wouldn't have the Congressman in the district he represents?

The Witness: That's right, because he lives in the Western part of Pitt County.

Judge Boyle: Right. What was the purpose in taking the 3rd around to Lenoir and Wayne?

The Witness: Well, it's hard to pinpoint any one particular reason as to why you did something, but I think one of my earlier plans had put Wayne in the Second District and the House Republicans and Representative McMahan gotten word -- this was from my talking with him, this is what I gleaned -- that since Congressman Jones represented Wayne in the old district, that he very much [*375] wanted to continue that representation of Wayne, I believe was one of the reasons why that was done. And, you know, it's -- well, go ahead.

It's hard to remember all of the reasons, because there could have been other ancillary reasons why we did what we did because it's always a chain reaction. But that was one of the reasons I specifically recall because one of my earlier plans had put Wayne in the 2nd, and that was a real concern.

* * *

[*378] A. To convince people, we made a dramatic cosmetic change actually and real geographic change in the 12th District and the 1st District. I talk about how we split less counties and how we had not split precincts except for two of them, that we had tied together communities of interest, that we had a plan that was fair, a partisan balance, a 6/6 split, a plan I thought the public would [*379] support and plan that people would have a better knowledge of what district they were in.

Judge Boyle: Do all of those arguments hold true today?

The Witness: For the '97 Plan?

Judge Boyle: Yes, sir.

The Witness: Absolutely. Yes.

Judge Boyle: But the '98 Plan is not geographically compact and you now have the experience of one election under the '98 Plan and none ever run under the '97 Plan, so how do those arguments remain valid?

The Witness: I guess that you can use a compass and a computer to make every district as geographically compact as it can be, but there were many other factors that we considered in this matter. For example if you are looking at the partisan nature of the 12th District, since that's what we mainly dealt with, I think that a Democrat has a much better chance under the '97 Plan than under the '98 Plan.

Judge Boyle: Only as to the 12th District, you make less vulnerable the 5th and 6th and 8th, don't you? So you trade off three districts that conceivably may be "less in play"

under the '97 Plan and make one district the 12th, almost a sure thing?

The Witness: Well, I don't think that under the [*380] way the voting results have been over the past few years that there would be any chance that a Democrat could win in the 6th and in the 5th and in the 10th, regardless of whether it's the '98 or '97 Plan.

Judge Boyle: But there's marginally more chance in the '98 Plan than in the '97 Plan?

* * *

[*381] Q. Okay. There's been some discussion about whether or not in the '97 Plan that the 8th District could be made more Democratic or some Democrats from Mecklenburg County could go down there and use those Democrats in the 8th. Were there certain constraints about the 8th in the 1997 Plan when you were working on it?

A. Well, at the time we were working on this, the 8th was represented by the dean of the North Carolina delegation, Congressman Bill Hefner, who had been there a long time. He had a strong core of support in the legislature in his district. And one of the things -- one of the results of the plan, although I know that the district eventually was won by a Republican, this time by a slight margin, one of the accomplishments of the plan was to significantly improve the Democratic performance of the 8th District from the 1992 Plan to the 1997 Plan. Congressman Hefner had been elected because he was an incumbent and had been there a long time, but his district had increasingly become more Republican leaning and the best way

was to move the district eastward because that's where most of the Democratic voters were. That's what we did, although we didn't move it as far as I wanted to move it. We came into play with Congressman McIntyre, but **[*382]** Congressman Hefner was satisfied. He was moved out of Rowan and he wanted to keep all of Cabarrus because that was his home county and he did not want to go into Mecklenburg. And to get to the Democratic voters in Mecklenburg, you have to go through strong Republican suburban districts, so that was just never considered and was never an option. Now, there was a plan presented --

Judge Boyle: He had to want to get rid of Moore, too, didn't he?

The Witness: Yes, we did that too. We moved to Cumberland. I lost my train of thought.

Oh, Senator Cochrane had presented a plan similar to Representative Morgan's plan that you asked me about earlier, which went from Mecklenburg all the way to Robeson, but, and I talked with Senator Cochrane about that and other Republicans who were pushing the plan, I just told them from the partisan nature of the plan that it just would not. Democrats and the Senate would not do that and it was viewed as a partisan plan, is what it was viewed as and I think that's probably what it was.

Q. Okay. Now, at some point in time, the plan passed and did you have occasion to go and visit with the Department of Justice?

A. Yes.

Q. Now, I don't believe you were here for Mr. Everett's **[*383]** opening speech, but he has alleged in his opening

statement that the state was under the gun to the Department of Justice and their maximization policy and had to draw a black district. In terms of the Department of Justice, had you had any contacts with them when you were drawing the plan?

A. No.

Q. And what was your first contact with them?

A. When I flew to Washington with members of the Attorney General's office and some other people to present the plan to them, that was the first contact I had with the Justice Department.

Q. Was it the last?

A. Yes.

Q. And was it a memorable meeting?

A. No. I mean, I think that they understood the ruling in *Shaw v. Hunt* and there was very little problem with preclearance. I didn't think that that would be a real concern. You never know what Justice is going to do, so we treated it seriously and went up and talked to them about what we had done. And I had mentioned in my deposition numerous times racial fairness was important, and I think the plan was racially fair. That I never thought that that was a serious danger. We were much more concerned with making sure that the plan was **[*384]** constitutional under *Shaw v. Hunt*.

Q. And that it was by partisan?

A. Yes, that was the practical consideration of -- just let me step back a minute. I would very much love to draw these districts in a vaccuum, but you have to get majority votes. In the legislature, partisan considerations come into play, and where people live come into play, and incumbents come into play. And it is very difficult trying to practically and

realistically put together majority votes without taking these things under consideration, and that's what we did. I was given a job to do and I wanted to make sure I did it.

Q. And you were attempting to do it in a lawful manner, I suppose?

A. Yes. And I think we ended up with a plan and this was foremost in my mind to serve the public better and I think this plan does. I think this plan is a plan where people can, in general, know where they vote. It's a fair plan.

* * *

[*386] Q. So -- well, the question was: wasn't it necessary? The question I asked you, and you said, didn't you, I have said that we thought that that was the case that we had to do that. Isn't that the question you were asked?

A. Yes. And we had to do it for a variety of reasons. I would have felt more uncomfortable about going for preclearance had we not had a majority/minority in the 1st District.

Q. You would have felt more uncomfortable?

A. Yes, sir.

Q. And you would have felt it wouldn't be approved?

A. That was a potential. I don't know whether that would be the case, but yes, I thought that would be a potential.

Q. Before you went up to the Department of Justice for this meeting, did you have any discussions with the Attorney General's office about preclearance?

A. Yes.

Q. And weren't you advised at that time that it was very unlikely to be precleared without a majority black district?

A. I don't remember specifically whether that was told to me. I do remember Mr. Stein coming to the [*387] redistricting committee and other attorneys advocating for a majority/minority district and that there could be Voting Rights Act problems if we didn't do that, but you can do it fairly easily and draw geographically compact district. So it was the right thing to do any way. So for all of those reasons, we did it.

Q. And it would have been wrong not to do it?

A. I think it would have been wrong not to do it.

* * *

[*387] Q. Let me ask you this, though: Isn't it true that African American voters, as members of the legislature are very important in the Democratic party political process?

A. All voters and all kinds of people are important in [*388] the Democratic political process, yes.

Q. Isn't it also true approximately 95 percent or even higher of the African Americans of North Carolina who register to voter register as Democrats?

A. That sounds like a figure that is correct. I don't know the figure personally, but is sounds like a figure that is correct.

Q. North Carolina has closed primaries for the Democratic primary?

A. I have been – I believe you can vote in the Democratic party if you are unaffiliated.

Q. You can't vote if you are a Republican or with the Reform party?

A. That's correct.

Q. Under those circumstances, isn't it true that African Americans are a very strong political influence within the Democratic party?

A. I would say that, yes; yes, that's true.

Q. And wasn't it your belief, from what you had heard and seen as a representative and otherwise, that the African American political faction, as it were in North Carolina, is very cohesive, that African Americans are not only Democratic but (unintelligible) in the political process?

A. I wouldn't want to go as far as to say that, but much [*389] less so today than it used to be, I would think.

Q. All right. Wasn't it true, in your view, that African Americans were very anxious to have as many African American members in Congress as possible?

A. There were many African American, yes, who thought it was important to have African American members of Congress representing North Carolina. Yes.

Q. And many of them thought it was important to have two majority black districts back in 1992, correct?

A. Yes.

Q. And didn't many of them think that it was important to have as heavy a minority population, African American population in the constituted 12th District as could possibly be put there?

A. I would say that there would be many African Americans who would advocate that, yes.

* * *

[*395] Q. Before that in the 1991 Plan, District 12 had meandered off to the east somewhere, or do you recall?

A. I really don't recall where 12 was in that first plan.

Q. With respect to '92, '97', '98, would you say that Mecklenburg had been the hub of the 12th District?

A. Hub is probably a good word, yes. How's anchor? Hub or anchor.

Q. Isn't that the word you used in your deposition?

A. I did. That was a good word.

[*396] Q. With respect to the 1992 Plan, were you aware that Mecklenburg company, in particular Charlotte, were split in such a way that most of the black precincts were put in the 12th and most of the white in the surrounding district the 9th?

A. I know there was a lot of attempt to make certain that there was a certain African American percentage in the 12th District during that period of time, so it would make sense that that would be what would have happened.

* * *

[*403] A. I don't think anything is assured. Congressman Watt was an incumbent. We paid attention to all incumbents and, yes, we looked at race. As I testified before, it was important racial fairness, but we did not specifically reach any type of threshold in race in the 12th District.

Q. You say you didn't try to reach any threshold in race. As far as the '97 Plan, the change for the '92 Plan, didn't you

basically try to achieve as close to 50 percent as you could get without getting there?

A. No, we did not have any type of goal. We first looked at trying to cure the constitutional defects and made sure that it was still a strongly leaning Democratic district. I think the fact that it has a relatively high number of African Americans is a fine thing. It was a benefit. It was one of the considerations particularly there were as you've asked me before, there were people who were pushing for a higher percentage, but there was also the consideration of making sure that the Sixth **[*404]** District was more Republican. That was something that Congressman Coble wanted, so all of those factors came into play.

Q. Nevertheless, at the end of the day in 1997, all of the predominately black precincts in Mecklenburg had been in the 1992 Plan were retained in the 1997 Plan; isn't that true?

A. Probably most all of them were, but with the addition of a whole lot more.

Q. And that was because of the deletion of Durham and of this sliver over in Gaston?

A. Because of what the Court told us to do, we had to make sure that this plan looked a whole lot nicer than it did and race didn't predominate.

* * *

[*406] A. We cut off Gaston, we cut off Alamance, we cut off Orange, cut off Durham and took all of those out of the 12 and kept the core, the Triad to Mecklenburg core fattened it,

made it look nicer. Took in a lot more Democratic leaning voters, systems as we could and made it a nicer looking district.

Q. In you take in African Americans, add them, you are taking in always also Democratic leaning voters 95 percent of the time; isn't that true?

A. Yes. African Americans generally are strongly Democratic leaning voters, yes.

* * *

[*408] Q. Now, with respect to the map of the 12th District, I just want to be sure on this. Looking at this map, would you be -- and the map is Joint Exhibit 106. Would you be able to identify for me what might be referred to as the "Greensboro black community"?

A. Only by the fact that you have on this map across here precincts that say 40 to 100 percent black. Because of this map, I can point it to you and say, there, but I could not tell you if you gave me a map without that information on it where that would be.

[*409] Q. You would think that area identified by the cross red or the checker red marks on Exhibit 106, those with 40 to 100 percent concentration would be what's referred to as the Greensboro black community?

A. I don't have a concept of what the Greensboro black community ask. If you are taking into account those precincts that have only 40 percent African American, then you have substantially less than the majority of the African American. This is the first time I have seen this map. I wouldn't be able to say where the Greensboro black community would be.

Q. By the same token, were the High Point black community or Winston-Salem or any of the other communities there?

A. Right.

* * *

[*411] Q. Then, looking at the page referring to e-mail for February 10, 1997, do you see who is addressed from and to whom?

A. It is from Gerry Cohen to me with copies to Leslie Winner.

Judge Vorhees: Copy to whom, please?

The witness: Leslie Winner.

Q. Now, with respect to Gerry Cohen, did you testify previously he was the person who was primarily doing the technical work, the handiwork, as it were, in getting the plans together?

A. Yes.

Q. Had he been assigned to you?

A. Yes.

Q. And Leslie Winner, she was a Senator at the time?

A. Yes.

Q. And no longer is a senator?

A. That's correct.

Q. Do you know whether or not at an earlier time in connection with the 1991 and '92 Plans, enacted by the General Assembly, whether Leslie Winner had been involved?

A. She was an attorney involved in the process. I'm not quite sure whom she represented, but she was an attorney, maybe an advisor to the House.

[*412] Q. She had been representing the General Assembly?

A. I can't say for certain, but she was an attorney involved in redistricting and she had a lot of knowledge about redistricting, yes.

* * *

[*412] Q. Senator, I was asking you about this memo, or e-mail rather, to you from Gerry Cohen. And I believe that's Exhibit 58 in the deposition exhibits. Senator, it's a fairly short e-mail or memo. I was asking about the people involved. I was asking you about Senator Leslie Winner. Is she the same Leslie Winner who's an attorney in Charlotte and now the attorney for the Charlotte Mecklenburg School District?

A. Yes.

Q. And she had experience in the redistricting process?

A. And Gerry Cohen had been the person who had drawn the 1991, 1992 Plan as well?

A. I don't know that personally, but that's something I presume from conversations. I think that's correct.

Q. And from his experience in drawing those plans and otherwise, you discovered that he was quite familiar with [*413] the North Carolina counties, precincts, districts and so forth?

A. That is correct.

Q. Now, there is the last sentence of this e-mail states: I have moved Greensboro black community into the 12th and now need to take about 60,000 out of the 12th.

Do you know what he was referring to when he said he had moved the Greensboro black community?

A. I do not specifically remember even getting this e-mail. And that is not a specific instruction that I would have given to him, but I am presuming that he is talking about moving the part of Greensboro that we had already discussed previously.

He and I at some point had discussed moving the Guilford County area into the 12th and for all of the reasons that I have talked to you about before, making it a stronger Democratic district, connecting the Triad. It made everybody happy.

Obviously, Congressman Coble's district was better, Congressman Watt certainly wanted more of his constituents than he had before and he was certainly happy getting more of those constituents and happy getting a higher percentage of African Americans in his district. And for all of those reasons we decided to go into Guilford County. But I am presuming that this is Mr. Cohen's **[*414]** descriptive term for that part of Guilford County that we eventually moved into the 12th District.

Q. Now, that's the part that we have been -- we looked at earlier the map that was predominately black?

Ms. Smiley: Objection. Form of the question, unless there's a foundation that he knows.

Judge Thornburg: Overruled.

A. You know, I'm a little embarrassed sitting here. I'm not quite sure whether it's majority African American or not, but I

know there's a substantial number of African Americans in that part of Guilford County that we moved to.

* * *

[*422] Q. What, with respect to the cause of balance, did you hear your legislators talking about partisan balance, or was that a concern?

A. Most legislators would want a plan drawn that would be partisan in their party's favor. Partisan balance came about because we had to make sure it passed both chambers, and that became a driving force in the process.

Q. So as far as you could tell, there was no strong feeling when the session began on the part of the legislator individual legislators about maintaining partisan balance?

A. Probably not at that time because they were not thinking about the practical aspects of getting a plan passed. I certainly was and Representative McMahan was. And as the process went forward into 1997, that became a very important issue in my going sure, that we got the plan passed. And it was an issue I think that was good for the public as well.

Q. So in the initial point when they are coming together to begin the session, the legislators would have been more concerned about keeping counties together, not splitting them in redistricting and having minor representation than **[*423]** they would have been about partisan balance?

Ms. Smiley: Object to the form of the question.

Judge Thornburg: Overruled.

A. I think that's very difficult to say. At that point going into the session, partisan balance hadn't become the important

issue that it became once we started negotiating plans. Like I said, that's not the kind of thing that legislators like to talk about publicly. It's not pretty and I don't particularly enjoy sitting here talking about it. But it became a very important issue in the practical problem of getting the plan passed through the legislature.

* * *

[*424] Q. Now, did the issue of minority representation maintain importance as you went through the process?

A. Racial fairness was important to this plan, yes.

Q. Well, by "racial fairness", what do you mean?

A. I believed that we needed to have a majority/minority district in the 1st District, and I think that that went a long way toward racial fairness and that the plan overall was fair to African Americans across the state.

Judge Boyle: Suppose you were in the minority and the opposing party is in the majority and they decided to redistrict and not only went up to 50 percent African American in two districts, but went all the way up to, say, 80 percent. Would that be racial fairness or would that be racial unfairness?

They could make two districts safe beyond belief, but -- and that could be done for partisan reasons, if you follow me. It's a slippery slope you get on when you decide you are going to engage in some use or acknowledgment of race.

[*425] A. Well, that's true, but I did not read the *Shaw v. Hunt* case to say we were doing race.

Judge Boyle: So politics could override race if politics were the true star of your decision?

The Witness: Yes, it could have been, could have.

Judge Boyle: Some party could decide they would put 80 percent minority in a district and thereby deprive their opponents of what would be predictable support in another district?

The Witness: Well, I think it's very, very difficult to draw a district in North Carolina with an extremely high percentage of African Americans under *Shaw v. Hunt*.

Judge Boyle: But you did it in '92 in District 1. All you would have to do would be to hopscotch around to other counties. In the 7th, you could make it more minority/majority than it is now.

The Witness: The Supreme Court told us we couldn't do that.

Judge Boyle: I thought when you went back in '97, you felt like you had to do that in order to pass the Justice Department?

The Witness: No, not with respect to the 12th. With respect to the 1st, we thought that it was important [*426] to have a majority/minority district; that wasn't the overriding factor. If we could not draw a district that looked reasonably geographically compact and met the other criteria, then we would not have drawn a majority/minority district. But it all fit nicely together, so that's why we did it.

Judge Voorhees: Now, you testified that the legislature, in coming up and reviewing various plans over the process of developing the '97 Plan, was mindful of the court decision in the *Shaw* case and Voting Rights Act and the other factors that you have mentioned.

Now, would it be accurate to say that the various members of your committee and of the legislature were cognizant of the percentages of minors who were being placed into the various districts, but particularly the 12th and the 1st?

The Witness: Yes. I mean, that was something that was printed out for every district and yes, everyone would have looked at that figure and some members would have cared more about it than others.

Judge Voorhees: I may have misunderstood you earlier. I thought you said you didn't know what the final percentage was on 12 when the '97 Plan was enacted.

The Witness: I did. I'm sure that I did. Yes, I did.

[*427] Judge Voorhees: If I thought otherwise, I just misunderstood what you said?

The Witness: I think he asked me what percentage of African Americans were in Guilford County that we put into the 12th. I can't remember. I didn't remember that particular figure.

Judge Voorhees: I think the question had to do with whether you were trying -- that the relevant powers in the legislature were trying to keep the number just under 50 percent?

The Witness: No, that was not.

Judge Voorhees: You say you weren't trying to do that?

The Witness: No.

Judge Voorhees: In so saying, you are not saying the legislature was not aware of the plans discussed?

The Witness: We did know, absolutely we knew a lot of people I think were happier the African American percentage

went up as a result of Guilford County being moved into the 12th.

Judge Voorhees: Was there a viable motive within the legislature to keep it just below 50?

The Witness: No.

Judge Voorhees: The final percentage was sheer [*428] happenstance?

The Witness: Absolutely. I mean, if you were trying to do that, then you would be running afoul of what the Court told us to do and that's just not what we did.

Judge Voorhees: All right.

By Mr. Everett:

Q. In one of your statements I think made on March 25, 1997, to the meeting of the House Committee on Congressional Redistricting you said, as I recall, see if this sounds right: I think overall it provides for a fair geographical, racial and partisan balance throughout the state of North Carolina. Does that sound right what you said?

A. Yes.

* * *

[*429] Q. I'm reading what purports to be a copy of a statement you made to the March 25, 1997, meeting of the House committee. I think that overall it provides for a fair geographical, racial and partisan balance throughout the State of North Carolina. Now, what were you referring to? Was that the plan that you were referring to?

A. I would assume that that's what I was referring to. I said many times I thought the plan was racially fair and --

Q. Racially fair. What do you mean by "racial balance"?

A. I don't know. I don't know what particular context I was making.

Q. Well, let me ask you this: Do you know what you mean by "partisan balance"?

A. Yes, sir.

Q. What does that mean?

[*430] A. Keeping the 6/6 split.

Q. All right. When you use the term "racial balance," wouldn't it follow that you were referring to maintaining a 10 to 2 racial balance between Whites and African Americans in congressional delegation?

A. No. I think I testified in the deposition and the testimony earlier that African Americans would have a fair shot to win both the First and the 12th Districts, and I think that's racially fair.

Your Honor was asking me, I think you had gotten the impression that we didn't pay any attention to race, but we did pay attention to race. That was one of the factors that was considered. But it was certainly not the predominate factor. I talked about why all the different reasons, why we did the Mecklenburg to the Triad District and certainly the fact that an African American has a fair shot at winning that district is part of racial fairness and I have testified to that.

Q. I want to ask you more about what you mean by "fair shot." With respect to the earlier testimony you gave and testimony you gave at the deposition, didn't you say that you were -- you had to have a majority black First District?

A. For a lot of reasons I thought that was a very important thing to do.

[*431] Q. And I asked you whether it was necessary to have it?

A. I don't know whether it was necessary or not. I think probably it was important for three reasons. It was numerous reasons, but, one, I think trying to get votes into the General Assembly. I think we would have lost a lot of votes if we had not done that. Secondly, we may have run afoul of the Voting Rights Act if we had not done that. So all of those things together were important. I thought we had a lot of interest that we needed to make sure to keeping the agrarian core all of that was important in dealing with the First.

Q. You might have run afoul on preclearance with the Department of Justice under Section 5?

A. We may have.

Q. When you say something "had to be", doesn't that mean that's a predominate motive?

A. Well, I think that it needed to be and should have been for many reasons, and I have given you those reasons. It being the right thing to do. Needing the votes, past history of discrimination, voting patterns, potential Voting Rights Act, violations, preclearance, all of those things added up. This is something we ought to do, so we did it.

Q. You should -- when you say you "had to", doesn't that mean it was mandatory and that was predominant?

[*432] A. I don't know what your question means about who was making it mandatory. All of those things told us that we needed to do it, so we did it.

Q. I believe you earlier testified that you thought it had to be done?

Ms. Smiley: Asked and answered, your Honor.

A. To get the plan passed, because it's the right thing to do, because it may run afoul of the Voting Rights Act. If we don't -- you can draw a nice compact district by doing it. All of those things add up.

Q. But didn't you say that having a majority black First District was something that had -- you said was not to be compromised? Did you -- didn't you say that?

A. I don't remember that exact language, but I think it -- I would agree with that. Yes, I think it was important.

Q. So, basically, as you viewed the legislature had no choice but to create --

A. Of course we had a choice, we could have not done it.

Q. You would have been close?

A. Probably close to that.

Q. Wasn't it your testimony if you would have any plan at all you would have to have a majority black district?

A. That was very important. I'm not going to sit here and testify that we just simply would not have passed the [*433] plan if that had not been the case, but it's close to that. It was very important for all the reasons that I said.

* * *

[*434] A. It's likely.

Q. All right. With respect to the 12th District, I'll ask you the same question: Would you think it was highly likely that an African American would be the Democratic nominee?

A. I think it would be likely.

Q. Would it be likely in each of those districts the Democratic African American Democratic nominee would then be elected?

A. I think it's likely.

Judge Boyle: This is all pure speculation. We live in a democracy. Anybody can run. If you chose to run in the 12th District, you have widespread support around, everybody got behind you, you are a white male and you could easily be the nominee and win.

The Witness: He asked me earlier saying there was no doubt. Yes, there's doubt. There's doubt.

Judge Boyle: Who's to say?

The witness: He asked me the question.

Judge Boyle: Yes, I understand. I'm critical of the question.

By Mr. Everett:

Q. You gave us your opinion on likelihood. I was asking you about it.

A. You mean by personal opinion as to likelihood, but, [*435] you know, it's far from a sure thing, but it's likely – more likely than not.

* * *

[*436] Q. I'm going to ask you if indeed there are 60,000 African Americans in Greensboro and the precincts are in the 12th District. Do you have any interpretation of the sentence as to "now need to take about 60,000 out of the 12th" in the e-mail which was directed to you?

Ms. Smiley: Object to speculation.

[*437] Judge Thornburg: Overruled, if he knows.

A. I don't know everything that -- I don't specifically remember this e-mail for one thing; and secondly, I don't know all the other things going on at the time. But I would presume -- and I know I'm not supposed to presume, but I presume the 60,000 we're talking about is total population of needing. If he went to Greensboro and put an area in Greensboro into the 12th that now he needed to take 60,000 people out of the 12th in order to make the population correct. That's what I presume.

Q. Wouldn't you also presume that the Greensboro black community approximated 60,000 when you read that?

A. No, I would not. We certainly don't believe they were all African Americans in Guilford County that were put into the district. We looked at the Democratic leaning districts in Guilford County, and for all the reasons I stated, we put them in the 12th.

* * *

[*438] Q. Let me ask you about earlier provisions, statements in this e-mail where it begins by stating: by shifting areas in Beaufort, Pitt, Craven Counties, I was able to boost the minority percentage in the 1st District from 48.1 percent to 49.25 percent. The District was only as the white percentage was 49.67 percent.

Do you recall a change in the plans that were being prepared by Mr. Cohen, under your general direction, which achieved such a boost in the minority percentage?

A. I don't remember this e-mail specifically and I do not remember these specific instructions about counties and

precincts, but I do know when we were dealing with the 2nd and the 3rd and all of those things that go in between, that sometimes because it's beside the 1st, sometimes we would drop below or just below [*439] majority/minority and we would have to do things from time to time to have a majority/minority, but not radical types of moves. This e-mail, obviously, I don't remember it specifically, but reading it now had to do with that issue of African Americans and what percentage. You know, it could be that Gerry was just had that on his mind and used in that last sentence, used black community and Greensboro as a descriptive term. I don't know, that's not something that I would have instructed him to do.

Q. Now, the next sentence: This was all the district could be improved by switching between the 1st and 3rd. And then reading further down, as to improvement, isn't it pretty clear that Mr. Cohen viewed it as an improvement to increase the African American percentage?

A. I don't know what he was thinking, but, I mean, it's pretty clear that at this point we were in one of those times where we were trying to make sure that the district had majority/minority and he was probably operating under some other parameters in the 1st that he couldn't move for some reason or another, and I don't know what stage of the process this was.

Q. Isn't it pretty clear, Senator, that he was informing you that he believed at least he was improving the district, he was informing you and Senator Leslie Winner that he was improving the district by switching precincts [*440] and increasing the African American percentage?

A. I don't remember this specifically of the ones again, but probably we were in one of those situations where we had moved something in the First District dropped a little below 50 percent and we were getting it back up again, and that's what he meant by improvement, but I don't remember specifically.

Q. And that would be in line with your belief that you had to have over 50 percent?

A. Yes, sir.

Q. And you were getting there one way or the other and he was looking at all the options?

A. Not one way or the other, we had to get there making sure we had a compact district that looked good, that complied with *Shaw v. Hunt* and took into account all the other considerations I testified to here today.

* * *

[*441] Q. So you gave this statement to the Senate and wouldn't it be inferred from that statement that *Shaw v. Hunt* was [*442] inapplicable as long as you didn't get to 50 percent?

A. Let me tell you why I made that statement. It had not really occurred to me until this final plan had been prepared, that this was an argument for constitutionality that it wasn't a majority/minority district.

In fact, Mr. Everett, you were over in the General Assembly and you came to see me and several other people and were telling people this was an unconstitutional plan. And a lot of people have a lot of respect for you, including me, and there were people who began to ask me questions about the constitutionality of the plan. And in all of the other reasons

that I gave I think were good arguments for the constitutionality, but this was an argument that came to mind said, wait a minute, where should the Court start looking at this issue as to when a district is predominately racial? And it became clear, made common sense to argue at least the process for the sake of argument that the test should not even be triggered if you don't have a majority/minority.

I didn't start out this process by trying to get it just under majority/minority for that reason. That was an idea and an argument that came to me later on in the process and I consulted with the Attorney General's office. They said that's a good argument to make, and I made it.

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[*462] ***W. Edwin McMahan***, **being first duly sworn, testified as follows during *cross examination*:**

By Mr. Everett:

Q. Representative McMahan, I just want to ask you a few questions. You, of course, are Representative McMahan as identified in the deposition.

With respect to the formulation of the 1997 Plan and its boundaries, to the extent there was a difference in participation in the origin of the plan, was it your **[*463]** recollection that the final details of that emerged more from the Senate committee or from your committee?

A. My recollection is that it actually came probably more from the chairs of the two committees negotiating individually.

Q. All right. And with respect to your deposition, at the time you had rather limited recollection of some of the events, as I recall, are there any of the answers -- have you reread your deposition in preparation for the appearance today?

A. Yes, sir, I have.

Q. Is there anything in the deposition that you did at the time of the deposition you did not recall that you now recall more fully?

A. Having read the deposition and some of the answers that -- well, actually, no I think the deposition is a fair representation of what I intended to say.

Q. And at what point, with respect to the 1st District in the plan at the time, you indicated that in its formulation race was a predominate factor -- well, was a huge factor, as I believe you stated. Is that still your recollection?

A. District 1, no question is because of the makeup of the House on our side and the number of minorities that we had to deal with on the House side. Certainly, when we **[*464]** looked at District 1, race was a factor and we determined early on that we could draw that district and make it more compact and geographically compact and also address the race issue.

Q. But was it your belief that it was necessary to have a majority/minority district in order to obtain preclearance?

A. Yes, sir, one district, yes sir.

Q. And that was the one in the northeast?

A. That's correct, sir.

Q. So in your instructions to Mr. Jones, who was your resident, did you inform him of this particular determination?

A. Again, we looked at one, it was never really a big issue as far as whether it would be a majority/minority district because what we were doing is primarily looking at it to make it more compact. And it certainly, from the very beginning, as Linwood Jones drew the map and we talked with the Senator and looked at it, it could be done, the majority/minority,as well as geographically compact.

Q. Now, was it then your testimony that the objective, the purpose of having a majority, black majority African American district in the northeast was a purpose that you were not going to compromise. You were going to get there **[*465]** one way or the other?

A. Well, it was one of the factors certainly that we needed to address.

Q. And did you have a belief from what you had been informed that without that particular district it would not be --

the plan would not be precleared if that were not a majority black district?

A. I certainly recall that we felt, in order to get preclearance, it would need to be a majority/minority district.

Q. Finally did you develop alternatives which you felt were more compact than those that were finally adopted for a majority district?

A. Would you repeat the question?

Q. In other words, in your planning, did you perceive ways of getting to a majority black district that were more compact than those that were in the plan that was more final adopted?

A. We were dealing with a situation where we needed to satisfy a lot of people to get the plan approved. So even though we might have been able to draw it more compact, it was other factors that led to us drawing it the way we did.

Mr. Everett: I have no further questions.

Judge Boyle: Was it your understanding, as you **[*466]** approached redistricting in 1997, that the 1st District, as composed in the '92 Plan, was facially in violation of the Constitution?

The Witness: No, sir, we did not look at District 1 as being in violation of the Constitution.

Judge Boyle: How about District 12?

The Witness: We knew that the three judge panel had ruled it to be in violation of the Constitution in District 12.

Judge Boyle: No, they hadn't, the Supreme Court had.

The Witness: I'm sorry.

Judge Boyle: So the U.S. Supreme Court told you District 12 violated the Equal Protection Clause and you could not continue to use that?

The Witness: That's correct, sir.

Judge Boyle: That's why you were in the redistricting exercise in '97?

The Witness: Yes, sir.

Judge Boyle: But as to District 1, without the Supreme Court directly speaking to that, was it the sense and understanding of the House that that district was likewise in violation of the U.S. Constitution as composed?

The Witness: Sir, as I think I said in my **[*467]** deposition, when I looked at District 1, having known the ruling on District 12, in my mind as a layman and not an attorney, it certainly appeared to me that we did need to make some changes in District 1 the way it had been drawn in 1992.

Judge Boyle: Does that mean there was a recognition you could not repromulgate District 1 in its then existing form? Do you want me to say it again?

The Witness: Please.

Judge Boyle: Was there the sense or the understanding of the House that you would not be able to effectively or constitutionally repromulgate, readopt, District 1 in the same form as it existed in the '92 Plan?

The Witness: Well, again, we felt it was our responsibility to look at the map and where we could make changes and make fewer counties divided, no precincts hopefully divided, which certainly included District 1. Because of the way it was drawn, it went all the way across the eastern part of the State. We felt it was our responsibility to make changes, yes, sir.

Judge Boyle: Thank you.

Judge Thornburg: Your concern at that point was primarily compactness as opposed to racial matters?

The Witness: Yes, sir. The biggest concern we had, when Senator Cooper and I first sat down and talked **[*468]** about it was, of course, maintaining the balance. The 6/6 balance was very, very important as well as geographic compactness, because at that time there were like 80 counties divided and a number of precincts, maybe 80 precincts were divided, but a lot of division there we felt like we needed to correct.

Judge Thornburg: Thank you.

Mr. Everett: May I ask a couple follow up questions to Judge Boyle, so there's no misunderstanding?

Judge Thornburg: Yes, sir.

By Mr. Everett:

Q. I'm trying to find -- here is the 1992 Plan and up here is the First District. You are not a lawyer?

A. (Witness nods head.)

Q. You were dealing with Mr. Cooper, who was a lawyer; you had Mr. Linwood Jones, who was a lawyer. I'm going to put it to you simply with respect to the 1st District in the 1992 Plan, which extended from the Virginia border almost down to South Carolina. Didn't you, on the basis of what you were told when you became chair of that committee, believe that that was an unconstitutional district?

Ms. Smiley: Object, asking him for legal opinion, your Honor.

Judge Thornburg: Overruled.

[*469] A. Judge Everett, again, I could look at that district, and knowing the problems with District 12, that we needed to

also try to see if we could make it more geographically compact. That's what we tried to do. We could do both, you know, make it more compact as well as satisfy the requirements on racial fairness.

Q. I hate to pressure you for a yes or no answer, but are you able to give a yes or no answer to whether you thought it was unconstitutional at that time?

A. I certainly felt that it needed to be redrawn. Whether it was because it was unconstitutional or because you could look at it and tell it needed to be redrawn, I'm not sure, Judge Everett.

Q. You are saying you are not sure whether you had belief one way or the other?

A. No, sir, I'm not.

Q. Let me ask you this: with respect to this district, which had been held unconstitutional by the Supreme Court, was it your belief that you could reconstitute this District without being subject to any issue as to constitutionality if you got the percentage of African Americans below 50 percent?

A. Judge Everett, the percentage was not the fact that we considered. It was primarily the fact that we felt the reason it was unconstitutional was because, again, the way **[*470]** it was drawn and so even though, you know, the racial fairness entered into it, it was not one -- it was one of a number of factors. I think geographic compactness was more important, we felt, than the racial percentage.

Q. Let me ask you this, then: when you got ready to present the plan to the House, didn't you, in fact, tell them that a reason for allowing or having the new plan, which I believe is right here, the reason for allowing it was that it was below 50

percent African American and, therefore, the shape didn't matter?

A. Judge Everett, I was asked that in my deposition. I went back and read the minutes. I did say that on the floor as one of the factors. I'm not an attorney. I didn't mean to interpret that to mean it's now constitutionally correct. I quite honestly, you know, Senator Cooper made that statement and I had picked up on that and that was the reason that I actually made that statement.

Q. So on the basis of what Senator Cooper told you or statement that he had made, and in trying to persuade the House members to adopt the plan, you so informed them with respect to the 12th District in the 1997 Plan?

A. As far as the racial percentage?

Q. Yes.

A. I think the question was asked, what was the racial **[*471]** percentage? I can assure you, though, that was not the primary objective that we had in drawing 12, was to try to maintain a certain percentage of minorities.

Q. Didn't you specifically say that you had gotten it up to 46 percent or above 46 percent? Didn't you tell the members of the House that you had done the best you could in order to satisfy the Department of Justice and satisfy the courts?

A. Well, again, racial fairness was an issue and I had to deal with the House that had 18 minor members, so it was certainly an issue and people had asked the question of where the percentage was, but, again, our first attempt, I think was like 40 percent. We were trying to make it as Republican as possible and make it fair for Republicans to have a chance, but,

again, it was not the main issue, the percentage, but I did answer the question that it was 46 percent.

Q. So it went up to 40 percent where you proposed to have it up to 46 percent and that was at persistence of the Democrats?

A. The Senate Plan was 46 percent.

Q. Insofar as the members of the House were concerned, African members, were they in favor, as expressed to you, as having the higher percentage of African Americans in the 12th District as possible?

[*472] A. Yes, sir, they were.

Q. And with respect to the 1st District, was that the same?

A. Yes, sir.

Q. And they were a very significant force in the House at that time?

A. They were certainly a force that I had to deal with along with a lot of other factors.

Q. And the partisan breakdown of the House at that time was 61/59?

A. Yes, sir, that's correct.

Mr. Everett: Thank you, your Honors.

Judge Voorhees: Now, you said that you felt the 1st District needed to be redrawn from the '92 Plan and that you weren't sure whether that was because of constitutional concern or because it just needed to have more compact shape?

The Witness: Yes, sir. We, of course, did not get any kind of ruling on One, but it was only a 12. But when we looked at the map again, we were trying to look at the map overall, primarily to address 12, but that affected the other districts. And when I looked at one, it was felt by Senator

Cooper and myself it did need to be looked at and redrawn because of the way it was configured.

[*473] Judge Voorhees: The reason for that is the Supreme Court sent a concern about shape?

The Witness: Yes, sir.

Judge Voorhees: So whether it was a fundamental concern or specific concern that the Supreme Court voiced about shape, that's still the reason why you felt it had to be reconfigured?

The Witness: Again, I'm not an attorney; that's my interpretation.

Judge Voorhees: Would that have been the sense of your colleagues, as far as you could tell?

The Witness: Yes, sir, I believe so.

Judge Thornburg: Are there any questions by defense that aren't covered in the deposition and the affidavit or by way of explanation of what's been asked here this morning?

Ms. Harrell: We would like to ask a few, your Honor. If I may approach the witness and give him a notebooks? He's not going to use most of them. This was prepared way in advance.

Judge Thornburg: All right.

Redirect Examination

By Ms. Harrell:

Q. Representative McMahan, you referred to your plan a few moments ago. Were you speaking about the plan that [*474] you presented to the House committee?

A. Yes, sir -- yes, ma'am.

Q. And could you look at the Joint Exhibit 105, Representative McMahan?

A. Okay.

Q. And is that labeled House Selecting '97 Congressional Plan 8.1?

A. Yes, it is.

Q. And is that the plan that you were speaking about that you presented to the House committee?

A. Ms. Harrell, I believe so. You know, when you look at these maps, it takes a little bit of time to make sure, but I believe that's it. I do recall it was labeled 8.1.

Q. All right. And did you refer to the percentage of minorities in your Senate District 12 in your House Plan?

A. As I recall, it was 40 percent having read the information in the minutes of the meetings.

Q. All right. And were you trying to make the Senate 12th District in your plan more competitive or less competitive for Republicans?

A. We were trying, obviously, to make it more competitive for Republicans.

Q. And when you became Chairman of the House Congressional Redistricting Committee, did you meet early on with Senator Cooper?

[*475] A. Yes, we did.

Q. And based on your understanding with your meeting with Senator Cooper, what were your overall goals in trying to steer this plan through the committee?

A. Again, he and I sat down and talked about what we thought was necessary in order to get this approved. I don't think very few people in the legislature felt that we could do it, that we could get the bodies together because, of course, the House was Republican and the Senate was Democratic. So we

sat down and said let's try to see what's important to you and important to me and see if we can bring it together.

Several of the factors, the primary factors, of course, he and I both agreed on was maintaining the 6/6 balance, which currently existed in the congressional delegation. And we needed to make sure we did that. We wanted to try to look at geographic compactness and divide as few counties and no precincts, if it was possible. It ended up we did a good job on that. We talked about racial fairness. We knew we would have to address to that. On the House side, certainly had a substantial number of minorities I would have to deal with and talk to and we wanted to be fair.

So geographic compactness and, of course, the incumbency issue. We were -- obviously knew that, you [*476] know, that it was probably important to try to protect as many of the incumbents as we could. So those were the overall, I think the majority of the issues that we agreed that would have to be addressed.

Q. Just briefly, what was the district that you were concerned about in the negotiations?

A. The one we spent the most time on, as it turned out, would be 2 and 4, and then 3 was important, too, because those were the districts that the numbers were very close on. And we were trying to make sure, again, to maintain this 6/6 balance. So 3, 2 and 4 got more attention, as it turned out, than any of the others.

Q. Okay. And are 2 and 4 both held by Democratic incumbents?

A. Yes, they are.

Q. What were you trying to do with regard to those districts?

A. Well, we -- 3 actually is -- the numbers indicated it's Democratic even though it's held by a Republican, so the Senate was trying to make 3 as Democratic as possible; I was trying to make 2 as Republican as possible.

Q. Okay. And if I could ask you to look also at Joint Exhibit No. 134. You have one of those in your notebook, Representative McMahan, Exhibit 134. And that's the labeled House '97 Congressional Plan A. You have that [*477] before you?

A. Yes.

Q. Is this a plan before you considered your A-1 to the House Committee?

A. Yes. This was, I think, the first plan that Linwood Jones and I redrew.

Q. And with regard to trying to work with minority members of the House, were you able to persuade them to support your bill?

A. As it turned out, the majority of them voted against it on the House side.

Q. And overall, would you say that you were able to accomplish the goals that you started out with regard to the redistricting process?

A. Yes, I was very pleased that we were able and I think actually Senator Cooper was surprised that we were able to get it approved with the numbers we did on the House side.

Judge Voorhees: What were the numbers, do you recall?

The Witness: Sir, I believe we had 85 positive votes, as I recall. I know it was 55 Republicans, I believe, that voted for it on our side, but I believe like 85.

By Ms. Harrell:

Q. And did you feel like the basic objectives that you [*478] started out with were met in the plan?

A. Yes, ma'am, I do.

Judge Thornburg: Did you say a majority of the minority members of the House voted against?

The Witness: Yes, sir, they did, which actually was a surprise, because I tried to work with them as we went along, but they offered a number of amendments on the floor because they were disturbed. They didn't think District 12 was strong enough, you know, the minority, they didn't have enough influence in District 12. So they offered amendments on the floor to actually put it back more like it existed on the '92 Plan, but we were able to defeat those amendments.

Judge Boyle: Were they trying to add Durham back to it?

The Witness: I believe Representative Michaux brought it back to Durham, I believe so.

Judge Boyle: They didn't care about losing Gastonia.

The Witness: I think that's correct.

Mr. Everett: May I ask one or two other questions? I'll be brief.

Judge Thornburg: All right, sir.

Recross Examination

By Mr. Everett:

[*479] Q. The questions were asked of you by Ms. Harrell about the area of dispute, major controversy that was over around 2 and 4?

A. Yes, sir.

Q. So then would it be correct that 12, the idea of 12 was 46 percent, or thereabouts, was accepted as a starting point not to be compromised. You are not going to compromise that part; the big dispute was to 2 and 4?

Ms. Smiley: Objection.

Judge Thornburg: Overruled.

A. The percentage was not -- we didn't discuss, Senator Cooper and I, the actual percentage that needed to be.

Q. Whatever it was, this was sort of a starting point to have this district with whatever the percentage of African Americans was?

A. Well, again, what we tried to do was look at it from the geographic compactness to make it acceptable in the fact of not making it any longer from one end to the other than other districts were. And, again, the actual percentage came out at the end because people asked for it, but it was not what Senator Cooper and I discussed as one of the criterias.

Q. I wanted to be sure I understand then. You are saying this 12th District, as shown here, is now geographically compact?

[*483] Q. Would you please identify yourself?

A. Yes. My name is David West Peterson.

Q. And could you just give a very brief summary of your [*484] qualifications and background?

A. Yes. I'm President of PRI associates, a statistical consulting and software development firm in Durham, North Carolina; recently retired as a faculty member from Duke more than 20 years. I taught first in the business school, later on in the law school and later yet in the statistics department. My area of specialty is statistics. I'm coauthor of a book titled *Use of Statistics in Equal Employment Opportunity Litigation* and co-author of a law review article on the subject of judging science and extended review of a book published by the Federal Judiciary Center. It was published in Washington in the use of scientific evidence in court.

I'm an occasional speaker at seminars for attorneys sponsored by the American Bar Association and other organizations. I'm a member of the faculty of a seminar put on annually at Duke University on the subject of judging science. The clientele there are not practicing attorneys, but judges.

Q. Could you elaborate what you are teaching the judges?

A. Basically, what we're trying to do is teach them the difference between good science and what might be called nonscience.

Q. What portion of that program were you responsible for?

[*485] A. I'm responsible for the initial portion where we talk about what ideal scientific study is and compare it with a study

which is far from ideal and point out what the differences are and why one is probative and the other is not.

Q. And what kind of judges attend this seminar?

A. Mostly state level judges, but we draw judges from all across the country. We draw an occasional federal district judge and an occasional federal circuit judge. Chief Justice Henry Frey of the North Carolina Supreme Court is one of our recent graduates and we recently took the show on the road, so to speak, down to Florida and put on the program there for the State Appellate Court judges, including several from the State Supreme Court.

Q. And attached to your second affidavit, which is Exhibit 20, is there a full resume and list of your articles and publications and background?

A. Yes.

Q. All right. Dr. Peterson, briefly, just what was your assignment?

A. My assignment in this case was to see to what extent there was statistical evidence in support of the proposition that race was the predominate factor in the drawing of the boundary of the 12th District.

Q. What was your analysis?

[*486] A. It was based on the following line of thought. If the boundary of the 12th District were drawn with the purpose of collecting blacks inside of it, one would expect as one travels along the boundary to find consistently that blacks are more heavily represented inside the boundary than outside. In contrast, if the boundary were drawn with the purpose of collecting Democrats into the 12th District, one would expect as one travels along the boundary to find consistently that

Democrats are more heavily represented inside the boundary than outside.

The situation can be likened to that of a contour line on a contour map. A contour line is drawn for the purpose of providing one with a level path. As one walks along a contour line, one has neither to climb nor descend consistently on one side of the line. The land is higher than it is on the other side.

We might suppose that we're given a boundary down on the map such as the boundary of the 12th District and ask to determine empirically whether it's a contour line. One test of that would be to travel along the line and see whether consistently the land is higher on one side of the line than it is on the other.

And if it turns out that that turns out to be the case, that's evidence in support of the proposition that **[*487]** the purpose for drawing the line was to make it a contour line. Likewise, if the purpose for drawing the line was to collect blacks into the 12th District, one would expect that walking along the line one would see a consistent pattern in which blacks were more heavily represented inside than outside. Likewise, if the purpose for drawing the line was to collect Democrats within the 12th District, traverse of the line should reveal that most of the time Democrats are represented more heavily inside than out.

What I found in my study traversing the boundary of the 12th District is that most of the time blacks are represented more heavily inside the line than out, about 80 percent of the time. I also found that Democrats are represented more heavily inside than out, also about 80 percent of the time. And so the evidence is equally supportive of both hypothesis, that is to say

the two are statistically indistinguishable. In particular, neither one dominates the other.

It is true that the party affiliation association is slightly stronger than the racial affiliation association, but it is not significantly, that is to say statistically significantly stronger. I can not conclude that the party -- that the evidence in favor of the party theory is statistically significantly stronger than it is in favor **[*488]** of the race theory.

Q. Would the converse hold for the race theory?

A. That's right. Neither race nor party dominates statistically.

Q. Okay. Could you briefly tell the Court, in very summary form, perhaps using some of your exhibits, what your analyses were?

A. Sure. I have described what I characterize as my main study and maybe the exhibit that best exemplifies the conclusions not only of that study but also of a couple of other studies that I did is an Exhibit numbered 428, which consists of a collection of pie charts.

Q. If you will allow the Judges a moment.

A. Sure. And I point particularly to Chart Number 8 in that collection.

Q. The full details of this one are in your first, second and third affidavit?

A. That's right, primarily the first. The chart that we're looking for is the one that looks like this, Chart Number 8.

Q. Exhibit 428?

A. In Exhibit 428. And this is a collection of 12 pie charts that summarize 12 variations on the second of three studies that

I did. But the results that were apparent here typify the results of all of the studies that I have **[*489]** done.

In interpreting a pie chart here, the more heavily the darker portion of each pie represents the strength of evidence in support of the race hypothesis, the hypothesis that race was an important factor in the drawing of the predominate boundary of the 12th District. The light gray areas indicates the strength of statistical report for party affiliation. That party affiliation was an important factor in drawing the boundary.

In looking across these charts, there's a pretty even split. The support for the one hypothesis, about as strong as the support for the other that's in all of my studies. If you get in and count closely, you will see that support is slightly stronger in favor of the party hypothesis overall than it is for the race hypothesis, but not statistically significantly stronger.

Q. And what did you -- what did you determine -- excuse me. You did three studies?

A. Yes.

Q. What was the result of the first study?

A. The result of the first study was that about 80 percent of the time going around the boundary, blacks are more heavily represented inside than out and about the same can be said for Democrats.

Q. And was that using convergent segments?

[*490] A. That was using all segments, 100 percent of the segments, all of the segments for which we had data.

Q. Did you do additional studies?

A. Yes, I did one study focused on what I call divergent segments in the Exhibit that we were just looking at. There's reference in the title to divergent segments, so this is a

summary of the second study based on divergent second segments.

Q. Did you do a third study?

A. Did a third study based on segments unequivocally based on divergent, that is by all measures they were divergent.

Q. Did you determine the results of those studies?

A. The same thing. The balance is about equal between the two. Summary of that one is shown in the next exhibit -- or Chart 9 of Exhibit 428.

* * *

[*494] Q. Okay. Now, I believe you have looked at Dr. Weber's statistical tables and you yourself ran a study based on his Table Two in his Exhibit 47?

A. Yes, that's true.

Q. Okay. Could you tell the Court what you did and perhaps show them your exhibit?

[*495] A. Sure.

Q. I believe it's Exhibit 433?

A. Yes, thank you. I don't have a copy of Dr. Weber's Table Two here, but referring to Exhibit 433, I recall that Dr. Weber's Table Two identified all of the counties that were split in the formation of not only the 12th District but other districts as well, including the First. And the point that he makes in looking at his Table Two is that consistently the portion of the county that's included in the 12th District in a split contains blacks to a greater extent than the county -- than the portions of the county not included in the 12th District. And he makes a similar finding with respect to the First District. What I did

was to ask essentially the same question, but with respect to party affiliation rather than racial identity.

What I find is that consistently the portion of split counties that are included in the 12th District contain Democrats to a greater extent than the portions of the counties that were not included in the 12th District, and that's what's reflected on the first page of Exhibit 433. So if I were to follow Dr. Weber's pattern of analysis, I would conclude, based on the first page of Exhibit 433, that party affiliation must have been the predominate factor in the drawing of the boundary of the 12th [*496] District.

Q. What about page two?

A. Page two is an analogous portion of Dr. Weber's Table Two, also based on party affiliation but this time pertaining to the 1st District. And once again, when you split by party affiliation rather than by race, you find that by and large it's the portions of the counties in which Democrats are more heavily represented that are included in the 1st District than the portions of the counties that are excluded.

There's an exception that has to be made for Beaufort, because Beaufort is a county like Davie County, a county in which precinct data are not available and the voter information for Beaufort County, as represented in the state, is really meaningless. You can see there's tiny differences in the portions included and excluded. Those are of no material consequence. We should probably scratch Beaufort off of this Exhibit.

Having done that, if I follow Dr. Weber's pattern and thought I would have to conclude from this part of Table Two

that party affiliation was the predominate factors in the drawing of the boundaries in the 1st District.

Q. Did you do similar analysis with respect to Table Four?

A. Yes, I did.

[*497] Q. Which I believe is splitting municipalities in places?

A. Yes. The results of that are shown in Exhibit 434. Once again, I split -- noted what the party affiliations are of each of the split pieces and noted that in virtually every sense it's the more heavily Democratic portion of the split geographic unit included in the 12th District.

So once again, following Dr. Weber's pattern of thought, I would be forced to the conclusion that party affiliation must have been the predominate factor in the drawing of the boundaries of the 12th District. And on the second page of Exhibit 434 is the analogous analysis for the 1st District. Once again, party affiliation is shown here.

Again, consistently it's the portions of the municipalities with the higher representations of Democrats included in the 1st District, if I follow Dr. Weber. Again, I would have to conclude that party affiliation was the factor predominate in the drawing of the First District.

Q. Dr. Peterson, Dr. Weber testified yesterday. He looked at your chart and he compared it and said, well, you notice that if you look at my tables that the gap in the racial percentage is greater than the gap in your [*498] political percentage?

A. Yes.

Q. Could you comment on that?

A. Oh, sure. Those percentages are measured on two completely different scales and the problem is essentially this:

most of the precincts in North Carolina and in the vicinity of the 12th District contain Democrats in the percentages of 40 to 60 percent. Relatively few precincts contain blacks in the percentage of 40 to 60 percent. Most precincts are either heavily black or heavily white. Most precincts are within a 60/40 mix of being Republican and Democrat.

As you move around North Carolina, you will find much wider representations in the racial mix than you will find in the political mix of the population. So those percentages are simply measured on two different scales. One can't compare directly a difference between racial percentages and a difference between party affiliation percentages. They are not just comparable.

Q. Does this difference in scale relate in any way to the questions that Dr. Weber has been making about your study that does not weigh your results the whole issue of weighing?

A. Sure. One of the complaints that was raised about my analysis in taking this hypothetical walk around the [*499] boundary of the 12th District, all I did was notice whether the representation of Democrats was greater on the inside than the outside or the representation of the blacks. And I didn't take explicit account of the magnitude of the difference, whether it was 20 percent greater or only 2 percent.

Part of the reason for not doing this is trying to figure out some way of dealing with the scale problem because small differences in the percentage between blacks and whites doesn't necessarily equate to small differences in representation between Democrats and Republicans. If one were going to devise a proper measure that took into account magnitudes of

differences, one would also take into account differences in the scale. I'm not sure exactly how to do that.

* * *

[*500] A. There are three things wrong with Dr. Weber's Table 6. The first is that an underlying predicate is that within a county all of the precincts are freely interchangeable in the following sense. That any collection of the precincts in that county could as well be included in the 12th District as any other regardless of the geographic location of those precincts. That's a fault that underlies not only as Table Six, but as Table 1, Table 2, Table 3, Table 4 and Table 5. Of course, that's an unrealistic supposition.

The second thing that's wrong with Dr. Weber's Table 6, is that it's incomplete. It applies only to precincts in which there are a majority of Democrats. And in my Exhibit 435, I have completed Dr. Weber's table to show additionally what the situation is with respect to all of the other precincts.

Q. If I might stop you right here, Dr. Peterson. I think for the Court to understand what you mean by complete, that they need to turn to Exhibit 47.

A. Okay.

Q. Table 6. I apologize, that's in another notebook.

Now, could you explain. Before when you say the table is not complete, could you -- and do you need a copy of Table 6?

[*501] A. I have it in mind, but I don't have a copy in front of me.

Ms. Smiley: Excuse me while I approach the witness.

Q. Now, what do you mean by the table is "not complete"?

A. If we look at the first page, page 56, we see the column headings indicate percent Democratic registration in the range of 50 to 59.9 percent and then 60 to 69.9 percent and greater than 70 percent. But there's no play place in the table for precincts in which the percent Democratic registration is less than 50 percent. So what I have done in Exhibit 435 is to provide the information on the other precincts.

Q. So you have completed the table?

A. So I completed the table, yes.

Q. Could you tell the Court what you conclude in this table?

A. Yes. This is the third point that's troubling about the Table 6, and that is when you complete Table 6 and examine it closely, what you find is that support is about equal even in Table 6 for the party hypothesis and for the racial hypothesis. And I can demonstrate that with the use of just a little analysis of the first page of Exhibit 435 if the Court would care to see it?

* * *

[*506] We tally up the numbers here, see how many R's we have, how many P's we've got. You see we have five P's and two R's. It's evident that there is more support here for the party affiliation hypothesis than there is for the race hypothesis. What may not be so apparent is those two differences are not statistically significant. There were not enough instances of comparison to say the party hypothesis dominates the race

hypothesis. It's clear the race hypothesis does not dominate the party affiliation **[*507]** hypothesis. We could do the same thing with the other tables, and what we would find is essentially the same result.

Q. Dr. Peterson, could you give us, after your various studies and your reviews of Dr. Weber's studies, could you give us your bottom line conclusion?

A. Sure. The statistical evidence is almost vocal in its support of the race hypothesis and party affiliation hypothesis. The two are statistically indistinguishable, but of the two hypotheses, the statistical evidence supports the party affiliation hypothesis marginally better than it supports the race hypothesis.

* * *

[*507] Q Dr. Peterson, I want to look with you at Exhibit 435. If we look at the first -- I'd like to ask you: If you look across these summary charts for all of the precincts **[*508]** involved in all the six counties, is it correct that for those precincts that are 60 percent black, nine of nine are included in the 12th Congressional District?

A. Yes.

Q. And is it true that of those precincts which are greater than 60 percent Democratic by registration, 32 of 63 are included in the Congressional District?

Q. I'm sorry, between 60 and 70 percent?

A. That's correct, yes.

Q. Is it true for those precincts which are voted greater, or which are registered Democratic, greater than 70 percent, 75 of 77 were included in the 12th District?

A. Yes.

Q. But for those greater than 70 percent black, all 49 of 49 are included?

A. That's correct, yes.

Q. Similar data would be shown with respect to the Senate election, the Court election and Lieutenant Governor election on the chart?

A. That's correct.

Q. Has this boundary segment analysis, which you have created, has it ever been applied to any other political districts anywhere in the world at any time in history?

A. I don't know the answer to that question.

Q. Are you aware of any instances where it's been **[*509]** applied elsewhere?

A. No.

Q. Ever been presented at any academic colleges?

A. No.

Q. Ever published in any scholarly journal for criticism or peer review of scholars?

A. No, not that I'm aware.

Q. Did you make the decision how proper segment analysis should be conducted?

A. I designed the study, yes.

Q. You made the decision to look only at the external boundary segments, not to consider in any way issues that relate to the construction of the district with respect to those

precincts which you don't touch the central boundary; is that correct?

A. It's true that the -- that ultimately the calculations depend only on the characteristics of the boundary just as when one draws a contour on a contour map. One has a sense of where the top of the mountain is.

Q. So if, in fact, there were precincts in the internal portion of the district that were largely white or largely Republican, would that affect your analysis in any way? Would it affect your boundary segment analysis?

A. If we had two 12th Districts, one of whose internal precincts were different in composition from the other, **[*510]** but the boundary segments in both 12th Districts were identical, my results would be the same for both.

Q. Have you ever testified in any redistricting cases before?

A. I don't believe so.

Q. And when you made the decisions concerning how boundary segments analysis should be conducted, did you make the decision not to weight the segments based on the populations of the relative of the precincts both inside and outside?

A. I did make that decision, yes.

Q. Did you make the decision to treat all convergent precincts, those which there are more blacks inside the district than outside and more Democrats inside than outside as absolutely equal in what they prove about either a partisan or a racial hypothesis?

A. Yes. Each segment was given an equal vote in determining the outcome of my studies.

Q. You did definitely look at degree of difference between race inside or outside or the degree between politics inside or outside?

A. Part of the reason for that is establishing an appropriate scale to use to normalize the magnitudes of differences.

Q. Did it matter to your analysis where within the **[*511]** geography of the district these segments were located whether they were in the core areas preserved or whether they were in connector areas?

A. Every single segment was given the same voice in determining the outcome regardless of its location.

Q. Is it possible that, in fact, for example, we talked about Davie County and also this district borders on Cabarrus County. Is it possible the explanation for why a boundary was selected may not have to do with race nor partisanship but simply no one wanted to cut up another county, like Davie County?

A. There were reasons for drawing a county where it was drawn that might be different from either race or party affiliation.

Q. Yours is not an additional analysis. This information wasn't available for the legislature to assist in their decision process? This analysis wasn't created at the time of the legislature's action, was it, this boundary segment analysis?

A. No. This was done after the boundary of the 12th District had been defined. My work was done after the boundary of the 12th District had been defined.

Q. And you are not suggesting that one could substitute the external precinct if it had a greater number of African Americans or Democrats for one internally?

[*512] A. No, there's nothing about my study that presumes substitutability, which is an important distinction between my analysis and Dr. Weber's analysis.

Q. And you were the one who decided to generate the list of segments. You did so by an eyeball inspection of the series of maps rather than any sort of GI system or more technical approach?

A. I don't know how else one would do what we did.

Q. And is it fair to say that there's some issues relating to the data; for example, there are some precincts in which the data reflects that there are more black registered voters in a precinct than there are black adults?

A. Yes.

Q And there are some precincts which the difference between the number of blacks inside and outside might be very small?

A. Yes.

[*515] Q. Isn't it true that as a practical matter for each of the plans from 1991 through 1998 you were the person primarily responsible with actually drafting the plan that was ultimately adopted?

A. I'm not sure if each time I was primarily responsible. Many times I shared responsibilities or perhaps was primarily responsible for the Senate version of the plan.

Q. With respect to the operation of the computer [*516] terminal, were you the person that did most of the operation of the computer terminal with respect to all the plans?

A. Are you asking about all the enacted, the plans enacted?

Q. Yes.

A. I think that other than the House version of the 1997 Plan, I was probably the primary operator and in '91, '92, '97 Senate and '98 Senate.

Q. Now, would it be true that under the operating with the computer terminal that you used, the racial data as to percentage of population, total population, percentage of voting age population and percentage of registered voters was readily available at all times on the screen?

A. Not always. The default certainly had a lot of that data appearing on the screen. Many times I sat for a particular session that defaults differently, so it didn't always appear on the screen.

Q. In any event, it was available if you wanted to use it and much of the time you had it available as you looked over the --

A. Over the decade, yes, but less in the '97 drawing.

Q. Was the data in the computer base as to the registration, the results of the elections, everything else essentially the same from 1991 when you first became [*517] engaged in redistricting right up through 1998 when the most recent plan was adopted?

A. From mid April '91 when we brought the system on line until now, we made no changes in any of the data in the data base in our system.

Q. And you were quite familiar with that data as a result of drawing the different plans certainly by 1997?

A. Yes, sir.

* * *

[*523] Q. Do you recall on or about February 10, 1997, writing a memorandum to an e-mail -- I should say to Leslie Winner and to Roy Cooper?

A. Yes. I probably wrote several e-mails to them. Are you asking about this one in particular?

Q. Yes, I'm referring now to what's Exhibit 58. With respect to that document, that e-mail, do you recall sending such an e-mail on or about February 10, 1997?

[*524] A. Yes, I do.

Q. And in that context, in the last sentence or the last two lines, there is a reference to the Greensboro black community?

A. Yes, sir.

Q. What were you referring to as the "Greensboro black community" when you wrote that memorandum?

A. Well, Senator Cooper had earlier that day or the previous day told me to draw a new plan which would

eliminate the problem in the prior plan that Guilford County was in three Congressional Districts, which he said was not acceptable. And there needed to be no county more than two congressional districts in the state. He asked me to make changes in the plan to have Guilford only in two congressional districts. My basic instruction was to include more of the 12th District -- excuse me, more of Guilford County in the 12th District for several different factors.

And the first thing I did was extend all the way up into Greensboro including, I think, most of two State House Districts and this was actually one sentence at the end of a longer memorandum that really talked about the First Congressional District. And by mentioning the Greensboro black community, I talked about the basic part of a larger group in the precincts that I moved in. I [*525] think I moved 27 precincts in at that time of which the Greensboro black community was about 11 of those 27.

Q. All right. Now, with respect to Guilford County, was any part of Guilford County already in the plan you were developing?

A. Yes. The plan that I was working from at that point had, I think, ten or 11 precincts in High Point; the Guilford County part of High Point in the 12th District already.

Q. Do you recall whether those precincts were predominately African American?

A. I think that five of the nine or ten in High Point at that time were predominately African American in the plan I had been working from at that point. I'm not sure of the exact numbers.

Q. Was that number either decreased or increased at a later time?

A. I believe that when -- the 27 precincts that I moved in that it was referring to in this memo, at least one of them was in High Point, but it was predominately white.

Q. Do you recall approximately the number of African Americans that were in Guilford County at the time of the plan immediately preceding the one that you drew and referred to in that memorandum?

A. I don't recall that number.

[*526] Q. All right. I'm going to show you this map, which purports to indicate racial concentrations in the 1997 Plan?

A. Okay.

Q. I'm going to ask you whether, with respect to Greensboro, whether or not the area that is indicated with red, red checks there, is the Greensboro black community includes the Greensboro black community that you were referring to in your memorandum?

A. Your key there shows those red precincts, shows those being 40 percent or higher black in terms of total population, so I think that certainly is the same sort of -- the red coloring is the same shorthand that I used at the time I talked about the black community in Greensboro.

Q. Do you recall how many African Americans in Guilford County were included in the plan that you submitted at that time?

A. I know the number that I added between the previous plan, which was called '97 Cooper 2.0 and the resulting Cooper 3.0, that I mentioned in this memo, I recall the total number of

people moved and the racial composition, but I don't recall what had been previously and I don't remember the total.

Q. What was the percentage of those you moved as far as **[*527]** race was concerned?

A. I think the total number actually moved, I went back and looked at that after the deposition, was about 108,000 of which about 52,000 were black.

Q. All right. And with respect to the moving the 52,000 black, were they moved in or moved out -- let me rephrase that. You mean a hundred some thousand were moved into the district as a result of this plan?

A. Yes. There were about 102,000 plus population in Guilford County moved from the 6th District to the 12th or from the 5th District to the 12th, because it had been in three different districts at the time.

* * *

[*528] Q. So the 50,000 approximately African Americans who were moved in at that time when you prepared the plan and sent the e-mail remained there in the district from that time on?

A. That's my belief, yes, sir.

* * *

[*529] Q. Would you view the 50,000 as a significant number of African Americans moved into the 12th District?

Ms. Smiley: Objection, Your Honor.

Judge Thornburg: Overruled.

A. I view both the 50,000 African American and 100,000 total as being significant in a district that had a total of about 600,000, yes.

Q. I thought equal populous required 550 some thousand?

A. I guess I rounded it to 600,000.

Q. About 552,000?

A. Yes.

Q. So 50,000 with respect to 552,000 would be roughly 10 percent?

A. Yes.

* * *

[*530] Q. Just with a view to pointing out in the first two lines, you are referring to a change and could you indicate what that change was and what the purpose of the change was?

A. I mention the changes were in Beaufort, Pitt, Craven and Jones Counties. Do you want me to read the sentence?

Q. That will be fine.

A. By shifting areas in Beaufort, Pitt, Craven and Jones County, I was able to boost the minority percentages in the First District from 48.1 to 49.25.

* * *

[*531] Q. In the next paragraph you use the word "improve" on two occasions, I believe. Improving the percentage. What do you have in mind there?

A. Well, in the sentence I mentioned this was all the district could be improved by switching between the First and

Third, unless I wanted to go to Pasquotank, Perquimons or Camden. There since the instructions at that point were to increase the percentage of minority in the district, improvement moving towards that goal, which means increasing the number.

Q. So improve is synonymous with increase African Americans in this particular numbering?

A. Yes, sir

Q. Was that based on the premise that you had to have a majority black in the First District?

Ms. Smiley: Objection to foundation.

Judge Thornburg: I'll let the witness answer to what he had in mind. That's what we're trying to get at here.

A. Could you restate the question?

Q. Indicate what you had in mind then with respect to [*532] achieving a majority black precinct -- majority black district, I mean.

A. The understanding that I received from Senator Cooper was that in order for the plan to pass and in order for what he thought was to perceive approval from the Justice Department along with a bunch of other factors, it was going to need to be more than 50 percent in terms of total population. So that's where we were moving along that track towards.

Q. So your instructions were to create a district with at least 50 percent?

A. I'm not sure right at the point of this memo it was to get it to 50, but I know I was told to make it higher at that point.

Q. It was 49 percent at that point?

A. Yes, sir.

* * *

[*538] Q. Let me ask you one question: Mr. Cohen, have you had an opportunity to look at your Exhibit with the changes and also compare it to Weber's Exhibit 47, Table 5?

A. Yes, I examined both of those against each other.

Q. How many precincts were moved when Greensboro was added to District 12?

A. 29.

[*539] Q. Of those precincts, how many were majority white?

A. 18.

Q. One last question, I hope last question: Do you know about why the Greensboro precincts were added to District 12, this particular move we were talking about?

A. So as to not have Guilford County divided into three districts and so as not to waste Democratic votes in the 6th District since that had been designed as a Republican District. Instead use them to improve the Democratic vote in the 12th District.

Q. What's the source of your information -- that's your belief that that's why they were moved?

A. Yes.

Q. And why do you believe that?

A. Conversations with Senator Cooper at the time the instructions were given.

Q. So he did not give you an instruction to move the black community into District 12?

A. No, he instructed me to move more Guilford County precincts that were predominately Democratic into District 12.

Q. And for the reasons you just stated?

A. Yes, ma'am.

CLOSING ARGUMENT OF ADAM STEIN (EXCERPTS)

[*595] Let me just say one thing about this and that's all I will say about the 12th, unless anybody has any question about the First. Ms. Smiley covered our position. I wanted to make clear that when my clients, some of my clients go back to the *Gingles* case, in fact Ralph Gingles [*596] was an Intervenor in the *Hunt* case -- in the *Shaw* case, and then when this case started he didn't intervene because Gastonia was out. Gaston County was out of the12th District but some of the other people did intervene. Their position all along is, and once we understood the law after *Shaw versus Hunt*, that there couldn't be -- there was not a basis for majority\minority district in the 12th.

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Exhibit 23 Type P Divergent Segments Using Democratic and Black Registration

Obs	Segm.	Internal County	Precinct	External County	Precinct	Inside 12 % Black	Inside 12 % Dem	Outside CD 12 % Black	Outside CD 12 % Dem
6	6	Mecklen.	Charlotte 81	Mecklen.	Charlotte 80	0.1484	0.61	0.1521	0.57
37	37	do.	Charlotte 29	do.	Charlotte 5	0.16	0.6382	0.17	0.6343
40	40	do.	Charlotte 61	do.	Charlotte 84	0.13	.062	0.19	0.6
41	41	do.	do.	do.	Charlotte 95	do.	do.	0.17	0.56
53	54	Iredell	Coddle Creek 3	Cabarrus	0.0301	0.03	0.56	0.09	0.53
54	55	do.	Coddle Creek 4	do.	do.	0.05	0.61	do.	do.
211	207	do.	Cool Springs	Iredell	Turnersburg	0.17	0.68	0.19	0.67
223	219	do.	Barrington	do.	Fallstown	0.010496	0.6232	0.011396	0.6165
80	81	Rowan	Spencer	Rowan	Trading Ford	0.09	0.75	0.15	0.61
81	82	Davidson	Boone	do.	do.	0.04	0.66	0.15	0.61
82	83	do.	do.	Davidson	Cotton	do.	0.662	0.15	0.6564
205	203	do.	do.	Davie	0.025	do.	do.	0.08	0.4
84	85	do.	Ward 2	Davidson	Cotton	0.08	0.68	0.15	0.66
139	140	Guilford	GB 15	Guilford	GB 14	0.16	0.71	0.22	0.69
144	145	do.	GB 24	do.	GB 23	0.201	0.6595	0.2087	0.6574
150	151	do.	Jamestown 2	do.	GB 24C	0.05	0.51	0.06	0.38
151	152	do.	HP 19	do.	Friendship 2	0.03	0.66	0.04	0.55
152	153	do.	do.	do.	HP 20	do.	do.	0.12	0.44
154	155	do.	do.	do.	HP 17	do.	do.	0.18	0.58
160	161	do.	HP 1	do.	HP 4	0.0033	0.56	0.00331	0.49

Obs	Segm.	Internal County	Precinct	External County	Precinct	Inside 12 % Black	Inside 12 % Dem	Outside CD 12 % Black	Outside CD 12 % Dem
199	200	Davidson	Reedy Creek	Davie	0.035	0	0.42	0.08	0.4
200	200.1	Do.	do.	do.	0.02	Do.	do.	0.07	0.4
201	201	do.	Yadkin College	do.	do.	0.06	0.58	Do.	Do.
202	201.1	Do.	Reeds	do.	do.	0.03	0.51	Do.	do.
203	202	do.	Tyro	do.	do.	0.05	0.53	Do.	do.
204	202.1	Do.	do.	do.	0.25	Do.	do.	0.08	0.4

Exhibit 24 Type R Divergent Segments Using Democratic and Black Registration

Obs	Segm	Inside County	Inside Precinct	Outside County	Outside Precinct	Internal Precinct % Black	Internal Precinct % Dem	External Precinct % Black	External Precinct % Dem
19	19	Mecklen.	Charlotte 97	Mecklen.	Charlotte 58	0.24	0.51	0.08	0.53
39	39	do.	Charlotte 61	do.	Charlotte 45	0.13	0.62	0.1	0.63
46	47	do.	CO 2	Cabarrus	0.0103	0.12	0.54	0.02	0.54
231	227	do.	HUN	Mecklen.	LC1 - North	0.13	0.57	0.1	0.63
87	88	Davidson	Ward 2	Davidson	Ward 6	0.08	0.68	0.08	0.72
96	97	do.	Arcadia	do.	Welcome	0.03	0.44	0.02	0.51
195	196	do.	do.	Forsyth	South Fork 2	do.	do.	0.02	0.53
196	197	do.	Hampton	do.	do.	0.03	0.38	do.	do.
97	98	do.	Midway	do.	do.	0.06	0.42	do.	do.
98	99	do.	do.	Davidson	Thomasville 6	do.	do.	0.01	0.43
117	118	Guilford	Jamestown 2	Guilford	South Sumner	0.05	0.51	0.02	0.51
149	150	do.	do.	do.	Friendship 2	do.	do.	0.04	0.55
141	142	do.	GB 18	do.	GB 17	0.09	0.63	0.08	0.68
214	210	Iredell	Eagle Mills	Iredell	Statesville 1	0.07	0.55	0.06	0.65
58	59	do.	Chambersberg	Rowan	Mt. Ulla	0.07	0.55	0.06	0.59

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EXHIBIT 25 SUMMARY OF DIVERGENT PRECINCTS AND SEGMENTS BY COUNTY

County	Type P Precincts/Segments Black Pop.		% of CD 12	Type R Precincts/Segments	
Davidson	6	10	3.8	4	6
Iredell	4	4	3.6	2	2
Rowan	1	1	4.6	0	0
Forsyth	0	0	16.7	0	0
Guilford	5	7	27.2	2	3
Mecklenburg	3	4	44	4	4

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EXHIBIT 47 (EXCERPTS)

[Caption Omitted in Printing]

DECLARATION OF DR. RONALD E. WEBER

I, Ronald E. Weber, Ph.D., declare pursuant to 28 U.S.C. 1746 as follows:

1. I am currently the Wilder Crane Professor of Government in the Department of Political Science at the University of Wisconsin, Milwaukee, Wisconsin; President of Campaign and Opinion Research Analysts, Inc.; former co-editor of The Journal of Politics and Chairman of the Department of Political Science at the University of Wisconsin, Milwaukee; former Fulbright Commission John Marshall Professor of Political Science at the Budapest University of Economic Sciences and the Central European University, Budapest, Hungary (1996-97); and former President of the Southern Political Science Association (1997-98). I received my B.A. in Political Science and History from Macalester College, St. Paul, MN, in 1964 and a Ph.D. in Political Science from Syracuse University in 1969, with specialties in American state [*2] politics, voting behavior, and quantitative analyses of political data.

* * *

3. I have been retained as a consultant and expert witness in a number of redistricting and voting rights cases and have been qualified as an expert by the U.S. District Courts in [22 instances].

* * *

[*3] I have testified in a number of Congressional and state legislative redistricting cases . . . I also have extensive experience developing redistricting plans for local and state government clients and assisting them with preclearance of those plans under Section 5 of the U.S. Voting Rights Act of 1965, as amended in 1982.

* * *

[*4] 5. I address the following questions in analyzing whether the 1997 U.S. Congressional redistricting in North Carolina results in a violation of the Fourteenth and Fifteenth Amendments of the U.S. Constitution in accord with factors set forth by the U.S. Supreme Court in Shaw v. Reno, Miller v. Johnson, Shaw v. Hunt, and Bush v. Vera:

(1) whether race was the predominant factor used by the state of North Carolina to draw the boundaries of the 1997 U.S. Congressional districts;

(2) whether the state of North Carolina in creating the U.S. Congressional districting plan of 1997 subordinated traditional race-neutral districting principles, such as compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations;

(3) whether the political explanation for the Plan A Congressional districts adopted in 1997 offered

by state defendants and their expert Professor Peterson has credibility or can be characterized as a post-hoc rationalization for the districting plan;

[*5] (4) whether the African-American voting age population anywhere in North Carolina is sufficiently large and geographically concentrated enough to constitute a potential voter majority using traditional districting principles to draw a single-member Congressional district;

(5) whether African-American voters residing in Districts 1 and 12 in the Act 586 plan of 1997 participate at lower rates than white voters in recent state-wide elections, indicating some evidence that a history of official discrimination has led to politically significant differences in political participation in the districts as drawn in 1997;

(6) whether sufficient levels of white crossover voting exists in the northeast and Piedmont regions of North Carolina such that fair U.S. Congressional districts can be drawn that do not need to be majority African-American in voting age population or voter registration in order to allow African-American voters a reasonable opportunity to elect candidates of choice in U.S. Congressional elections; and

(7) whether race-predominant U.S. Congressional Districts 1 and 12 in the 1997 North Carolina plan are overly safe from the standpoint of giving a candidate of choice of African-American voters

an opportunity to be elected, thus questioning whether the plan was [*6] narrowly tailored to satisfy a compelling state interest.

6. The results of my analysis to date will be presented in this declaration in the following form: in Section I, I will outline briefly the history of Congressional districting in North Carolina since 1960; in section II, I will describe the analyses conducted to answer the first two questions and set forth my conclusions on those questions; in section III, I will describe the analyses conducted to answer the third question relating to the political explanation offered by Professor Peterson; in section IV, I will describe the analyses conducted to answer the fourth question relating to size and concentration of African-American voters in North Carolina; and in sections V, VI, and VII, I will discuss participation rates of African-American and white voters as well as white crossover rates in recent statewide elections within two regions of North Carolina and the electoral safeness of North Carolina Congressional districts 1 and 12. Tables, charts, and exhibits relevant to my analyses will be included within the body of the declaration or as attachments to this declaration.

[*7]FINDINGS

I. HISTORY OF RECENT CONGRESSIONAL REDISTRICTINGS IN NORTH CAROLINA

* * *

[*8] 10. As was true following the 1970 Census of Population, the 1980 Census of Population revealed that the 11 districts of the 1970s were out of population balance. Thus, the North Carolina General Assembly had to adjust the populations of the 11 districts before the 1982 elections. The first plan adopted in July, 1981 did not receive pre-clearance under Section 5 by the U.S. Department of Justice. The General Assembly followed-up with a revised plan that satisfied the Department of Justice's [*9] objections in a special session of February, 1982. For the first time in the modern history of North Carolina, it was necessary to split four counties in order to balance the populations across the districts. Avery, Johnston, Moore, and Yadkin counties were each split across two districts. The town of Chapel Hill as well as the city of High Point were each split across two districts owing to the fact that those two places cross county lines and the General Assembly decided to draw the Congressional districts using county lines between Orange and Durham counties and between Guilford and Randolph counties. These 11 districts were used in the elections of 1982-1990.

11. The population of the state of North Carolina grew more rapidly than the U.S. as a whole between 1980 and 1990,

and thus the Congressional apportionment following the 1990 Census of Population allocated an additional seat to North Carolina, bringing the size of the Congressional delegation back to 12 seats as it had been in the 1950s.

* * *

[*10] 12. I conclude this section by making several observations. First, the sub-dividing of counties to achieve equally populated Congressional districts in North Carolina is a relatively recent occurrence, taking place for the first time with the splitting of just four counties in the early 1980s. Second, no county in North Carolina is large enough that it must of necessity be sub-divided to comply with the principle of "one-person, one-vote". Mecklenburg County, the largest county in population in North Carolina, is slightly smaller than a current Congressional district. Third, . . . at the maximum a total of eleven North Carolina counties might need to be split to create an equally populous twelve district plan, by using whole counties to create Congressional districts and then splitting just one county to balance the population between each of two districts. Fourth, despite the fact that the number of persons needed to populate an equitably populous plan increases each decade (after the 1980 Census the ideal district size was 534,706; after 1990 it was 552,386; and after 2000 it could be as high as 648,104 based on recent state population projections), the percentage of African-American persons in the [*11] North Carolina population declined between 1980 and 1990. As Professor Alfred W. Stuart's report for this case reveals, it is likely that the African-American percentage of the

total state population will be less in 2000 that it was in 1990. Thus, as the average size of a Congressional district increases, the number of African-American persons of voting age available to constitute a majority of voters in a Congressional district does not increase as rapidly (I will return to this point more specifically later). Finally, as I will consistently point out below, the appropriate social science benchmark for comparison of the challenged plan is the plan of the 1980s (with 11 districts) and not the constitutionally invalidated 12 district plan of the 1990s.

* * *

II. ANALYSIS OF DISTRICTING CRITERIA EMPLOYED BY STATE

* * *

[*12] 14. The question of whether race was the predominant factor used by the state of North Carolina to draw the boundaries of the U.S. Congressional districts in 1997 can be addressed by an examination of both tabular data prepared by the North Carolina Information Systems Division from data compiled by the U.S. Bureau of the Census and maps created on the computer facilities of the North Carolina General Assembly Legislative Services Office Redistricting System. Data from both sources are reported in tabular form and on maps to display the use of race as a redistricting criterion.

15. . . . Table 1 reports for each 1997 North Carolina Congressional district the racial composition of the total population of the counties that were sub-divided in the creation of the plan using data from the County Split Assignments Report of March 26, 1997 of the North Carolina Information Systems Division. For both Districts 1 and 12 that were created to elect an African-American member of Congress, the county splits show a **[TABLE 1 relocated to 319 - 391] [*15]** typical pattern of African-American total population majorities in the largest jurisdictions of each district. A total of 22 counties are split across the 12 districts and just one district (District 11) is composed of whole counties. Ten of the split counties are accounted for by the construction of District 1, while another six are accounted for by District 12. Six other counties are split in the plan. Half of the counties in District 1 are split, while 100 percent of the counties (all six) are split in the creation of District 12.

16. Turning first to District 1, six of the ten counties wholly within the district have African-American population majorities and the other four counties have African-American population percentages of at least 42 percent. The racial make-up of the parts of the ten sub-divided counties assigned to District 1 include four with parts over 50 percent African-American, four others with parts of over 40 percent African-American, and two with parts of over 30 percent African-American. The African-American percentage of the total population in the counties split across District 1 and another district is above the district-wide African-American percentage in four counties. The African-American percentage of the total

population is above 60 percent in Lenoir County and above 50 percent in Pitt, Wayne, and Wilson Counties. Conversely, Table 1 reports that the African-American percentage of the total population in the parts of most of those split counties assigned to another district than **[*16]** District 1 is consistently lower. For example, the part of Lenoir County assigned to District 3 is 13.6 percent African-American in total population, while the part of Pitt County allocated to District 3 is 18.1 percent African-American in total population. The county splits as they impact the white majority districts in eastern North Carolina can be divided into two categories: 1) those county splits for the districts where the intent usually was to provide African-American voters to shore up the electoral bases of candidates who might be characterized as candidates of choice of African-American voters (e.g. Districts 2 and 4), and 2) those county splits for the district where the intent usually was to carve out African-American voters so as not to endanger the electoral bases of the candidates who might not be characterized as candidates of choice of minority voters (e.g. District 3). Almost every time there was an opportunity to use race as the basis for dividing political subdivisions up politically, the North Carolina Congressional districting plan does it in the eastern part of the state.

17. Turning next to District 12, the racial make-up of the parts of the six sub-divided counties assigned to District 12 include three with parts over 50 percent African-American and three in which the African-American percentage is under 50 percent. Almost 75 percent of the total population in District 12 comes from the three county parts which are majority

African-American in population. Mecklenburg, Forsyth, and Guilford [*17] counties which contribute almost 75 percent of the district's total population are located at the extremes of the district. The other three county parts (Davidson, Iredell, and Rowan) have narrow corridors which were designed to pick up as many African-American persons from each of those counties to fill out the district to an ideal sized district. A precinct level map of District 12 shows that all African-American majority precincts but one in those three counties have been assigned to the district. Conversely, Table 1 reports that the African-American percentage of the total population in the parts of those split counties assigned to another district than District 12 is consistently lower. For example, the part of Mecklenburg County assigned to District 9 is 7.2 percent African-American in total population, while the part of Forsyth County allocated to District 5 is 11.1 percent African-American in total population and the part of Guilford County assigned to District 6 is 10.2 percent African-American. The county splits as they impact the white majority districts adjacent to District 12 in the Piedmont are those county splits for the districts where the intent usually was to carve out African-American voters so as not to endanger the electoral bases of the candidates who might not be characterized as candidates of choice of minority voters (e.g. Districts 5, 6, and 9). Almost every time there was an opportunity to use race as the basis for dividing political subdivisions up politically, the North Carolina Congressional districting plan does it in the Piedmont part of the state as [*18] well.

18. Table 2 provides further confirmation that race was the predominant factor in the drawing of the lines for the North Carolina Congressional districts in 1997. This table reports the exact same data as in Table 1 except that in Table 2 the data are organized by county rather than Congressional district. For example, the pattern shown in each of the ten counties that are split between District 1 and an adjacent district is one in which most of the time the sub-division was along racial lines. All ten counties were split along racial lines. The most dramatic examples from Table 2 include Lenoir County where 61.1 percent of the total population allocated to District 1 is African-American while only 13.6 percent of the total population assigned to District 3 is African-American, and Wilson County where 51.0 percent of the total population allocated to District 1 is African-American while only 12.0 percent of the total population assigned to District 2 is African-American. A similar pattern holds in the other eight counties of District 1. In each of those counties, the population on the District 1 side of the Congressional district line is more strongly African-American while being more strongly white on the other side of the line in an adjacent district. When counties were split to achieve population equality, the racial composition of the components differ little. When the splits are for racial purposes, the differences are large. **[TABLE 2 relocated to 323 - 325]**

[*21] 19. The pattern shown in each of the six counties that are split between District 12 and an adjacent district is one in which most of the time the sub-division was along racial lines. All six counties were split along racial lines. The most

dramatic examples from Table 2 include Forsyth County where 72.9 percent of the total population allocated to District 12 is African-American while only 11.1 percent of the total population assigned to District 5 is African-American, and Mecklenburg County where 51.9 percent of the total population allocated to District 12 is African-American while only 7.2 percent of the total population assigned to District 9 is African-American. Similarly, I find Guilford County where 51.5 percent of the total population allocated to District 12 is African-American while only 10.2 percent of the total population assigned to District 9 is African-American. A similar pattern holds in the other three counties of District 12. In each of those counties, the population on the District 12 side of the Congressional district line is more strongly African-American while being more strongly white on the other side of the line in an adjacent district. When counties were split to achieve population equality, the racial composition of the components differ little. When the splits are for racial purposes, the differences are large. I can infer from these data that race was a predominant factor in the line drawing for Districts 1 and 12 and the adjacent districts in the 1997 North Carolina Congressional district plan.

* * *

[*22] 21. I have also examined data related to city and town splits in 1997 North Carolina Congressional district plan. These **[*23]** data will be used to determine whether I should alter my opinion that race was a predominant factor in the construction of the districts. Using a report titled Places Split

by 97 North Carolina Congressional Districts prepared by Dan Frey, GIS Analyst, with the North Carolina General Assembly Information Systems Division, I created Tables 3 and 4. These tables are directly comparable to Tables 1 and 2. Note that these tables include every city or town in North Carolina that is split across two or more districts by geography in the 1997 plan. Thus, there are four places where the geographical split does not involve people on both sides of the line. Furthermore, there are several others where a small number of people are split away from a larger number of people by the use of the precincts in the 1997 Congressional districting plan.

22. According to Table 3, 11 of 13 cities or towns were split along racial lines to create Congressional district 1. Nine of the cities or towns split between district 1 and another district involve placing a majority of the African-American population into District 1 as displayed in Table 3. When cities or towns were split to achieve population equality, the racial composition of the components differ little. When the splits are for racial purposes, the differences are large.

23. A similar pattern of splitting cities or towns is shown for District 12. Nine of 13 cities or towns were split along **[TABLE 3 relocated to 327 - 331; TABLE 4 relocated to 333 - 337]** **[*30]** racial lines to create Congressional district 12. Five of the cities or towns split between district 12 and another district involve placing a majority of the African-American population into District 12 as displayed in Table 3. Also the four largest cities assigned to District 12 are split along racial lines.

24. The above analysis is further confirmed by the listing of split cities and towns in Table 4. Here one can see how most of the cities and towns assigned to District 1 are split along racial lines. Particularly striking are the figures for Goldsboro, Greenville, Kinston, Rocky Mount, and Wilson. Table 4 also highlights the racial splits of the cities or towns assigned to District 12. Again the difference in the figures for Charlotte, Greensboro, High Point, Statesville, and Winston-Salem are large. On the other hand, many of the cities and towns split between other districts do not display large racial differences (exceptions are Fayetteville and Raleigh).

25. Defendants' experts point out that the 1997 North Carolina Congressional districting plan relies almost without exception to the 1990 Voting Tabulation Districts (VTDs) or precincts as the building blocks for constructing districts. They note that only two precincts were split in constructing the 12 districts. One of these two precincts is in Mecklenburg County and was split to provide a geographical land bridge to connect two parts of District 9 to each other. The precinct in **[*31]** discussion is Charlotte Precinct 77 and extends to the southern county boundary and the state line with South Carolina. The precinct is a predominantly African-American majority precinct and the bulk of the people was needed to create a race-based District 12. Thus, the state split the precinct placing one non-African-American person in the part of the precinct in District 9. If that one person is a registered voter and does vote in a Congressional election, there will be a ballot secrecy issue for that one voter. The other split precinct is in

Craven County where 23 persons are put in District 3 rather than District 1 with remainder of the precinct's residents.

26. The discussion of not splitting precincts by defendants' experts misunderstands how racially homogeneous precincts are today in North Carolina and other parts of the nation. For example, both Georgia and South Carolina, split only a small number of precincts in creating their Congressional Districting plans of the 1990s but this fact did not prevent plaintiff challenges from invalidating Districts 2 and 11 in Georgia and from attacking District 6 in South Carolina. Louisiana did not split a single precinct in the creation of the two plans invalidated by the Hays court in the Western District of Louisiana. Thus, given the homogeneous racial character of precincts in North Carolina, it is quite possible to draw districts in which race predominates using whole precincts.

[*32] 27. Next I present Table 5 which details at the precinct level by county the assignment of precincts to Congressional districts for the 22 counties that were split in creating the 1997 Plan (HB 586). For the counties which were split predominantly on the basis of race I expect that the precincts with the highest percentage of African-American persons will be placed in either District 1 or 12 and the precincts with the highest percentage of non-African-American persons will be placed in an adjacent district. For the counties which were not split predominantly on the basis of race, I expect to find a less systematic assignment of precincts to the two districts into which the population is divided. To assist the reader in

following the tables, I have ranked the precincts from high to low by the percentage of African-American population in each precinct (see Table 5). The table also reports a breakdown of the voting age population by race as well as the total population by race. Finally, the district to which the precinct is assigned in the 1997 Plan is noted in the final column of the table.

* * *

[*38] 39. . . . The patterns revealed in Tables 1-4 are reinforced by the precinct level data in Table 5 for the six split counties of District 12. Two groupings of counties are most apparent: those where the difference between African-American percentage of the total population assigned to District 12 is greater than 20 percentage points higher than the African-American percentage assigned to the adjacent district and **[*39]** those where the difference in the African-American percentage is less than 20 percentage points. Forsyth, Guilford, Mecklenburg, and Rowan counties fall into the former category, while Davidson, and Iredell counties are in the latter category.

40. I first examine the precinct assignment pattern for Forsyth County which includes the city of Winston-Salem and where the most severe of racial disparities exist between Districts 5 and 12. All 15 African-American majority precincts in the county are assigned to District 12, while all but four of the white majority precincts in Forsyth County are assigned to District 5. No precinct in which more than 20.39 percent of the total population is African-American is allocated to District 5.

The assignment of Forsyth County precincts between Districts 5 and 12 is the clearest pattern of the predominant use of race in the creation of District 12 in the 1997 Plan in the Piedmont region of North Carolina.

41. I next look at the precinct assignment pattern for Mecklenburg County which includes the city of Charlotte and where very severe racial disparities exist between Districts 9 and 12. All 28 African-American majority precincts in the county are assigned to District 12, while all the precincts where around 85 percent or more of the population is white in Mecklenburg County are assigned to District 9. Some white majority precincts are allocated to District 12, but for the most part these assignments **[*40]** are made to provide contiguous paths from the African-American majority precincts north to Iredell County so as to connect African-American populations in Charlotte with those in Winston-Salem, High Point, and Greensboro. The assignment of Mecklenburg County precincts between Districts 9 and 12 shows a very clear pattern of the predominant use of race in the creation of District 12 in the 1997 Plan in the Piedmont region of North Carolina.

42. I next examine the precinct assignment pattern for Guilford County which includes the cities of Greensboro and High Point and where severe racial disparities exist between Districts 6 and 12. All 17 African-American majority precincts in the county (all of which are in either Greensboro or High Point) are assigned to District 12, while almost all of the precincts where around 80 percent or more of the population is white in Guilford County are assigned to District 6. Some

white majority precincts are allocated to District 12, but for the most part these assignments are made to provide contiguous paths from the African-American majority precincts in Greensboro and High Point southwest to Davidson County so as to connect African-American populations in Greensboro and High Point with those in Winston-Salem and Charlotte. The assignment of Guilford County precincts between Districts 6 and 12 is another clear pattern of the predominant use of race in the creation of District 12 in the 1997 Plan in the Piedmont region of North Carolina.

[*41] 43. I next examine the precinct assignment pattern for Rowan County including the city of Salisbury which is split between Districts 6 and 12. Three of the four African-American majority precincts in the county (the one African-American majority precinct assigned to District 6 is a small non-contiguous part of large white majority precinct)are assigned to District 12, while almost all of the precincts where around 80 percent or more of the population is white in Rowan County are assigned to District 6. Some white majority precincts are allocated to District 12 to provide contiguous paths from Iredell County to Davidson County so as to connect African-American population concentrations in Charlotte with those in Winston-Salem, High Point, and Greensboro. The assignment of Rowan County precincts between Districts 6 and 12 is another clear pattern of the predominant use of race in the creation of District 12 in the 1997 Plan in the Piedmont region of North Carolina.

44. Turning next to the two counties split between Congressional District 12 and an adjacent district where the difference in the African-American percentage of the total population is less than 20 percentage points, I examine first Iredell County. Only nine precincts in this county are assigned to Congressional District 12, including two African-American majority precincts in the city of Statesville. The white majority precincts allocated to District 12 are there to provide **[*42]** contiguous paths from Mecklenburg County to Rowan County so as to connect African-American population concentrations in Charlotte with those in Winston-Salem, High Point, and Greensboro. The assignment of Iredell County precincts between Districts 10 and 12 provides further evidence of a pattern of the predominant use of race in the creation of District 12 in the 1997 Plan in the Piedmont region of North Carolina.

45. I next examine the assignment of precincts between Congressional Districts 6 and 12 in Davidson County. A total of 20 precincts in this county are assigned to Congressional District 12, including two African-American majority precincts in the city of Lexington and one in the city of Thomasville. The white majority precincts allocated to District 12 are there to provide contiguous paths from Rowan County to Forsyth and Guilford counties so as to connect African-American population concentrations in Charlotte with those in Winston-Salem, High Point, and Greensboro. The assignment of Davidson County precincts between Districts 6 and 12 provides further evidence of a pattern of the predominant use of race in

the creation of District 12 in the 1997 Plan in the Piedmont region of North Carolina.

* * *

[*43]47. I began to answer the question of whether the districts in the 1997 North Carolina Congressional districting plan subordinate race-neutral traditional redistricting principles when I discussed above the tabular data on the splitting of counties, cities, towns, and precincts. The state of North Carolina subordinated the splitting of county, city, and town boundaries to a desire to allocate persons by race to a greater [*44] extent than necessary to comply with the one-person, one-vote standard of population equality. This was particularly true in the drawing of Districts 1 and 12 as well as adjacent districts. A total of 22 counties and 41 cities and towns were split in the drawing of the 1997 North Carolina Congressional districting plan, for a total of 63 split political subdivisions. Only six counties and 15 cities and towns were split to create the other districts (several of the cities and towns were split because they are on a county boundary and different counties were assigned to different districts). In the recent past no counties had been split to create the 11 districts of the 1960s and 1970s, while just four had been split to construct the 11 districts of the 1980s. The maximum number of counties needed to be split to fashion a 12 district plan is 11, allowing for one county to be split between each two districts.

48. A report by David C. Huckabee, "Congressional Districts: Objectively Evaluating Shapes," CRS Report for

Congress (Washington: Congressional Research Service, The Library of Congress), May 24, 1994, also contains information from other states to compare with the experience of North Carolina in Congressional districting.

* * *

[*45]49. Huckabee also provides information on the percentage of split counties allocated to the Congressional districts of the 1990s. There are a large number of Congressional districts from around the nation which have 100 percent of the counties split which are allocated to a district. Most of these are plans involving splits of large counties in the metropolitan areas of the country and these plans are not comparable to the North Carolina setting. No single district in the country is like North Carolina 12 in splitting as many as six counties and sub-dividing 100 percent of them.

50. Huckabee also provides information on the number of places having populations of 10,000 or more and indicates how [*46] many of these are split by district lines. In the 1997 plan, North Carolina district 1 has nine such places (either cities or towns, and six of them are divided between district 1 and another district. District 12 has eight cities or towns 10,000 or more in population, and all eight of them are split between districts.

51. Another race-neutral traditional redistricting criterion involves the issue of geographical contiguity. I have examined the maps of the 1997 Congressional districting plan

to determine whether the state adhered to geographical contiguity in the construction of the plans. I find that the plans are technically contiguous in that parts of geographical territories are joined together through water areas or narrow land bridges. A person wishing to traverse Congressional district 3 by automobile, for example, would have to leave the district, then go through another district, before returning to district 3. The best examples of technical contiguity occur in Beaufort and Pamlico counties where two parts of district 3 are joined across the Pamlico Sound, in the city of Charlotte where two parts of district 9 are connected through a split precinct at the southern edge of Mecklenburg County, and in Guilford County and the city of High Point where a narrow land bridge is used to connect Davidson County with the city of Greensboro in Guilford County. Although the Congressional districts are technically contiguous, the district lines do not promote functional contiguity. Anyone serving districts 3, 9, and 12 in the U.S. Congress will need to **[*47]** travel usually outside each district in order to traverse the district each is serving in the most efficient manner.

52. Another race-neutral traditional redistricting principle involves the issue of geographical compactness. The issue of geographical compactness can be addressed first by examining maps of the 1997 Congressional districts. A statewide map of the 1997 districts and detailed maps of Districts 1 and 12 demonstrate clearly that Districts 1 and 12 as well as adjacent districts are oddly shaped and not compact.

53. A second way to assess the compactness of a Congressional district is to use a variety of compactness measures now standard in political science. These measures are reported upon in two works--1) Richard H. Pildes and Richard G. Niemi, "Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances after Shaw," Michigan Law Review, Vol. 92 (December 1993), pp. 101-205, and 2) David C. Huckabee, "Congressional Districts: Objectively Evaluating Shapes," CRS Report for Congress (Washington: Congressional Research Service, The Library of Congress), May 24, 1994. The actual computations of the compactness scores reported in these two works were conducted by Kimball Brace and Douglas Chapin of Election Data Services, Inc., Washington, D.C.

54. Three measures of compactness are reported in the **[*48]** Huckabee report for all 435 Congressional districts in the U.S. adopted following the release of the 1990 Census of Population. Huckabee adopts two geographic measures--a dispersion measure and a perimeter measure--and one population measure. Pildes and Niemi rely on the same two geographic compactness measures reported by Huckabee. Gerald Webster in his report for the defendants in this case use the same two geographic compactness measures as Pildes and Niemi as well as Huckabee.

55. Combining information about the two measures of geographical compactness in the Huckabee report with those in the Webster report I can see that North Carolina's Congressional District 12 is still the least compact district in

North Carolina on both indicators of geographic compactness and that District 1 is the second least compact district on the perimeter measure and the fourth least compact district on the dispersion measure. In Appendix E of the Huckabee report, he reports a table containing the two geographic compactness scores for the bottom ten percent of Congressional districts in the nation. Using the criterion of having at least one compactness score in the bottom ten percent, North Carolina 12 would clearly continue in that compilation while North Carolina 1 would probably not make the list of the worst ten percent of the districts even though many of the lowest districts in Huckabee's table have moved up to higher scores will revised districts. A number of congressional districts in other states with lower perimeter or dispersion scores have been found **[*49]** to be unconstitutional by Federal district courts. North Carolina 12 is less compact than struck-down Florida 3 on one indicator, than invalidated Georgia districts 2 and 11 on both indicators, than unconstitutional Louisiana 4 on one indicator, than invalidated New York 12 on one indicator, than struck-down Texas districts 18, 29, and 30 on one indicator, and unconstitutional Virginia 3 on both indicators. I have also taken the perimeter and dispersion compactness scores from the Huckabee report and revised the ranking order for the worst districts on each measure (this process has used the best information on the two compactness scores for the current Congressional districts, some of which is contained in the Webster report). North Carolina 12 ranks either 430 or 431 out of 435 in compactness using the dispersion measure (I am unable to determine whether the state of New York increased the compactness of District 8 when it recently reworked is plan

to remedy the unconstitutionality of District 12). North Carolina 12 ranks either 432 or 433 of 435 in compactness using the perimeter measure. Thus, North Carolina 12 continues to be the least compact district in North Carolina and among the worst in the nation in terms of geographical compactness.

56. Pildes and Niemi report geographic compactness scores for the Congressional districts of the 1980s using the dispersion and perimeter measures. These scores for the old 11 districts in North Carolina are used to compare to the scores for the current **[*50]** 12 districts in the 1997 plan.[1] The range on the dispersion measure in North Carolina runs from a low of .26 to a high of .57 and averages .36 across the 11 districts in the 1980s. In the 1997 plan, the range on the dispersion measure runs from a low of .11 to a high of .62 and averages .35 across the current 12 districts. The range on the perimeter measure in North Carolina runs from a low of .22 to a high of .46 and averages .30 across the 11 districts in the 1980s. In the 1997 plan, the range on the perimeter measure runs from a low of .04 to a high of .33 and averages .19 across the current 12 districts. This comparison reveals that the 1997 12 district plan is less compact overall than the 11 district plan of the 1980s, using the two standard measures of geographic compactness.

* * *

[1] Richard H. Pildes and Richard G. Niemi, "Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances after Shaw," Michigan Law Review, Vol. 92 (December 1993), Table 6, pp. 189-91.

[*52] III. EVALUATION OF THE POLITICAL DEFENSE OF DISTRICT 12

59. I conclude that the political defense of Congressional District 12 offered by state defendants and their expert Professor David W. Peterson is nothing more than a post-hoc rationalization in an attempt to mask a true aim of including as many African-American persons as possible in District 12 given a decision to make the district up of persons from six counties. To permit a political explanation to trump the racial explanation, Professor Peterson would need to know that the state actually displayed political data on the computer screen as the plan's designer was doing his/her work. The computer screen used by the North Carolina Legislative GIS system displays racial breakdowns as the plan designer is working and does not display political breakdowns. Only after the plan is completed can a designer assess the political character of the district created. Assessment of the political character of a district is post-hoc and cannot be done while precincts are being allocated to a district. Other problems exist with the analyses of Professor Peterson which I will outline below.

60. Professor Peterson concentrates on the margins of Congressional District 12; he ignores the core. His measure focuses on the precincts just inside or just outside the district. These precincts -- even the ones just inside District 12 -- are less heavily black than the ones in the center of the [*53] urban areas included in the district. He should be focusing on the

core of the district rather than focusing on the periphery, where decisions probably came late in the process, i.e., is precinct X to be included or excluded.

61. Professor Peterson's segment analysis is flawed. Unless adjacent precincts inside and outside of Congressional District 12 have equal populations, then it would not be possible to substitute one for the other. In other words, an outside precinct may have been rejected because its inclusion -- or more likely the substitution of the precincts needed to eliminate the Type R divergences -- would have violated the equal population requirement. Professor Peterson needs to demonstrate that when comparing inside and outside precincts they have nearly equal populations. Unless the population differences are trivial, it would be necessary for him to make comparisons on groups of precincts inside and outside Congressional District 12 that have nearly equal populations.

62. According to Professor Peterson at paragraph #9 of his affidavit of February 27, 1998, a perfect correlation requires that a precinct would never be excluded if it has more African-American persons than an adjacent included precinct. One problem with making this precinct-by-precinct assessment is that failure to include a precinct that is six percent African-American counts against the Racial Hypothesis if the adjacent precinct in [*54] Congressional District 12 is five percent African-American. The six percent African-American precinct may have been excluded because elsewhere in the district a 40 percent African-American precinct was included and the

population ceiling precluded adding the six percent African-American precinct.

63. Since with rare exceptions in North Carolina, African-American voters cast more than 90 percent of their votes for Democratic candidates in general elections, while white voters usually cast about 60 to 70 percent of their votes for Republican candidates, the Democratic vote in a precinct will usually exceed the black voter percentage in the precinct. If the thesis of Professor Peterson is true, one would find that all African-American population majority precincts would be assigned to District 12 along with all non-African-American majority precincts where an African-American Democratic candidate carried the precinct in a recent election. As I will demonstrate below, the former occurred, but the latter did not always occur. This analysis will further demonstrate the power of the racial explanation and debunk the political explanation for the boundaries of Congressional District 12.

64. To examine the proposition outlined above, I have examined the assignment of precincts within the six counties of Congressional District 12, looking alternatively at assignment by race and by political preferences. I have constructed a set of **[*55]** tables which cross-tabulate the racial makeup of the population of each precinct by county with the Democratic registration percentage, the percentage of support for Democrat Harvey Gantt in the 1990 U.S. Senate contest, and the percentages of support for the Democratic candidates for Lieutenant Governor and Court of Appeals Judge in the 1988 general election. This cross-tabulation will reveal that all

African-American majority population precincts are assigned to District 12 from the six counties and that many of the precincts carried by Democratic candidates in the two contests of 1988 and the one contest of 1990 were not necessarily assigned to District 12.

65. These results are displayed in Table 6 for each of the six counties and for Congressional District 12 as a whole. All four Davidson County precincts more than 30 percent African-American are in Congressional District 12. The weakest support for a racial explanation comes from the 1990 Gantt table as four of the five precincts in which he polled a majority were placed in Congressional District 12. Charlotte's former mayor ran poorly in Davidson County, being held below 30% of the vote in 23 of the 41 precincts. Table 6 for Davidson County also demonstrates that most of the precincts less than 30 percent African-American in population but in which most voters are registered Democrats were excluded from Congressional District 12. Analyses of the contests for lieutenant governor and Court of Appeals show that no precinct in which the population was less **[TABLE 6 relocated to 357-360] [*70]** than 30 percent African-American but which cast more than 60 percent of their ballots for the Democratic candidate are in Congressional District 12.

66. I next turn to the Table 6 portion for Forsyth County. Table 6 for Forsyth County shows that all precincts at least 50 percent African-American in total population are included in Congressional District 12 for each of the measures of

Democratic strength considered. Once the African-American population percentage drops below 50 percent, then regardless of the Democratic strength registered in the precinct, there is no guarantee that the precinct will be assigned to Congressional District 12. As further evidence that race is more important than party when sorting precincts between Congressional District's 5 and 12 in Forsyth County, if the population is less than 40 percent African-American, then regardless of how concentrated Democratic strength may be, it is highly unlikely that the precinct will be included in Congressional District 12.

67. I next turn to the Table 6 portion for Guilford County. All 17 majority African-American Guilford County precincts are in Congressional District 12. However a number of precincts that are majority Democratic on the various measures are outside Congressional District 12. The contrast is pronounced in terms [*71] of party registration where three-fourths of the precincts 50 - 59.99 percent Democratic by registration are in Congressional District 6 rather than Congressional District 12. Even in the 60 - 69.99 percent registration range, most precincts are excluded from Congressional District 12. Similarly with the Gantt vote in 1990, 18 of 22 precincts in which Gantt got 50 - 69.99 percent of the vote are outside Congressional District 12. The pattern repeats with the other two sets of election data. All of the heavily black population precincts are in Congressional District 12 while only some of the heavily Democratic precincts are included.

68. I next turn to the Table 6 portion for Iredell County. All three Iredell County precincts more than 30 percent African-American in population are in Congressional District 12 while 15 of 21 precincts less than 30 percent African-American are in Congressional District 10. The strongest evidence of a racial explanation comes from the party registration analysis where 13 of the 19 precincts less than 30 percent African-American black but majority Democratic in registration are excluded from Congressional District 12. The party explanation is best supported by the 1990 Gantt analysis in which the only four precincts carried by the African-American candidate are in Congressional District 12. Despite all but two precincts having [*72] Democratic registration majorities, no more than four precincts ever cast a majority of their votes for Democrats. If I lower the threshold to 40 percent support for a Democrat, results for the Gantt and the Court of Appeals contests would support a racial explanation.

69. I next turn to the Table 6 portion for Mecklenburg County. All 34 Mecklenburg County precincts more than 30 percent African-American are in Congressional District 12! In contrast, of the 99 precincts less than 30 percent African-American, 82 are in Congressional District 9. This alone suggests that race played an very important role in selecting precincts for Congressional Districts 9 and 12. The tables for Democratic registration and support for Gantt in 1990 fit best with an interpretation that race was more important than party since in both of these presentations, the bulk of the 30 - 39.9% black precincts in which Democratic strength is in the 50 - 59.9 percent range are excluded from Congressional District 12.

Focusing on the Gantt vote in 1990, the bulk of the 30 - 39.9 percent African-American precincts in which he polled 60 - 69.9 percent of the vote are outside Congressional District 12. The 1988 Court of Appeals vote provides the strongest support for a party explanation for districting. If, however, I include precincts in which Democratic strength is 40 - 49.9 percent, then [*73] most of the precincts are in Congressional District 9, for all four measures of partisanship.

70. I next turn to the Table 6 portion for Rowan County. Rowan County has only three majority African-American population precincts (all more than 70 African-American) and these are assigned to Congressional District 12. The majority-white precincts in Congressional District 12 tend to be the ones with the strongest support for Democrats. Every precinct that gave Gantt in 1990 a majority is in Congressional District 12 and all but one precinct that voted Democratic for lieutenant governor or court of appeals in 1988 is in Congressional District 12. The strongest evidence for the racial explanation comes from the registration data where most of the precincts 50 - 69.9 percent Democratic in registration are not in Congressional District 12. If I drop the threshold down to 40 percent Democratic on each measure, then in the 40 - 49.9 percent Democratic category, most precincts are excluded from Congressional District 12 on each of the four measures.

71. Finally, I turn to the Table 6 portion for all six counties combined in Congressional District 12. District-wide all African-American population majority precincts are assigned to District 12. On the other hand, a large number of

precincts [*74] which demonstrated their willingness to support Democratic candidates in the 1988 and 1990 general elections irrespective of the race of the Democratic candidate are assigned to adjacent districts and not Congressional District 12. For example, 60 of the 98 white majority precincts won by Harvey Gannt in 1990 were assigned to another district. If the motivation was to create a Democratic majority Congressional District 12 which was hospitable to an African-American Democratic candidate in the 1990 U.S. Senate contest, a large proportion of favorable turf is not included in the district. A partisan district would have attempted to include a majority of those precincts and paid less attention to race in the construction of the district.

72. Of course, no Congressional election was conducted within the boundaries of Congressional District 12 in the 1997 plan under challenge as this court invalidated that plan. However, assuming that the challenged district is similar to the 1998 plan used in the 1998 elections, then if the objective behind the 1997 plan was to maintain a partisan balance in the congressional delegation with six Democrats and six Republicans, the effort failed. In 1998, the election of Robin Hayes in Congressional District 8 gave Republicans a 7 - 5 edge in the delegation. The election of a Republican upon the retirement of Bill Hefner in district 8 had been widely expected so the only [*75] surprise was the smallness of the Hayes' margin. Congressional District 8 is rated highly competitive by The Almanac of American Politics and a close race is expected if the 1998 plan is used for that district. Congressional District 12 in the 1997 plan shares part of its boundary with

Congressional District 8 so that potentially Congressional District 8 could have been made more Democratic and Congressional District 12 less Democratic as a step toward insuring that Congressional District 8 not go Republican after Hefner's departure. Information included by Professor Peterson at paragraph # 21 of his affidavit indicates that Congressional District 12 was at least 62 percent Democratic in the 1997 plan. A plan motivated by a desire to maintain six Democratic districts would have taken steps to shore up Congressional District 8 and the opportunity for doing so existed if Congressional District 12 were made less Democratic, i.e. fewer Democratic votes would be wasted.

* * *

[*78] V. VOTER PARTICIPATION RATES WITHIN THE GEOGRAPHY OF CONGRESSIONAL DISTRICTS 1 AND 12

76. In order to address the question of whether African-American persons within the boundaries of Congressional Districts 1 and 12 of 1997 have less opportunity than white persons to participate in the political process, I have estimated participation rates for selected Democratic primary, Democratic runoff, and general elections between 1990 and 1998 to determine the patterns of participation among the two.

* * *

[*79] 77. I present a summarization of these results in Table 7 for Democratic primary and runoff elections of the 1990s (see Exhibits C and D for summaries of the regression and extreme case analyses for the elections examined). In all five contested Democratic primary and runoff elections held within the geographical areas of 1997 Congressional Districts 1 and 12, African-American persons who were registered to vote had a participation advantage over white registered voters, based on weighted regression analyses (see Table 7). So on ten separate occasions African-American voters participated at higher rates than white voters.

78. I present a summarization of these results in Table 8 for general elections of the 1990s. In all six contested general elections held within the geographical areas of 1997 Congressional Districts 1 and 12, the African-American participation rate was lower for persons who were registered to vote compared to white registered voters, based on weighted **[TABLE 7 relocated to 361ja: TABLE 8 relocated to 363ja; TABLE 9 relocated to 365ja]** **[*82]** regression analyses (see Table 8). Thus, on the 12 separate occasions I have analyzed African-American voters participated at lower rates than white voters. This means that in general elections African-American voters must make electoral coalitions with white voters in order to elect Democratic candidates to congressional office using 1997 Plan A. In the next section, I will assess the degree of white cross-over voting in the same elections where I have estimated participation rates of the two groups.

V. WHITE CROSS-OVER VOTING IN NORTH CAROLINA

79. I examine whether white voters in the northeast and Piedmont regions of the state of North Carolina in particular cross-over and give support to candidates of choice of African-American voters in recent general elections. If white cross-over voting is common in the parts of the state where Congressional Districts 1 and 12 were created in the 1997 plan, this information might have been taken into account by the architects of the North Carolina congressional districting plan under challenge. In order to address this question, I will first report upon estimated white crossover rates using bivariate ecological regression and extreme case (homogeneous precinct) analysis for the selected statewide general election contests of 1990, 1992, 1996, and 1998 held within the boundaries of challenged Congressional Districts 1 and 12 adopted in 1997. **[*83]** Second, I will report upon estimated white cross-over rates for the 1998 Congressional elections held within the boundaries of the districts ordered by the courts in 1998.

80. In Table 9, I report my estimates of white cross-over voting in the 1990 contest for U.S. Senate involving the candidacy of African-American Douglas Wilder, in the 1990 contest for State Auditor involving the candidacy of African-American Bill Campbell, in the 1996 U.S. Senate and State Auditor contests involving candidates Gantt and Campbell, and in the 1998 contest for the U.S. Senate where John Edwards was the candidate of choice of African-American voters. I conducted bivariate ecological regression and extreme case

analyses of these elections. In both Congressional Districts of the 1997 plan, African-American candidates obtained appreciable levels of white cross-over support. The levels are white cross-over support are the highest in District 12 and somewhat lower in District 1 for at least the two elections involving Harvey Gantt. Gantt is estimated to have received a low of 17.9 percent of the white vote in 1990 in District 1 and a high of 37.7 percent of the white vote in district 12 based upon the weighted regression analyses. White cross-over was the highest in the two general election contests of 1992 and 1996 in District 1 for State Auditor. And John Edwards obtained between 35 and 40 percent of the white vote in his successful challenge to former Senator Faircloth in the Districts 1 and 12 in the 1998 general election.

[*85] 81. In Table 10, I report my estimates of white cross-over voting in the 1998 Congressional elections contests in Districts 1 and 12. In the 1998 contest in District 1 Eva Clayton was the African-American Democratic candidate, while in District 12 Mel Watt was the African-American candidate. I conducted bivariate ecological regression and extreme case analyses of these elections. In both Congressional Districts of the 1998 plan, African-American candidates obtained appreciable levels of white cross-over support. The levels of white cross-over support are slightly higher in District 12 than in District 1, but both estimates exceed 30 percent white cross-over support. These levels of white cross-over support along with African-American voter support translated into strong margins of victory for the Democratic candidates in the two districts.

VII. ELECTORAL SAFENESS OF CONGRESSIONAL DISTRICTS 1 AND 12

82. To assess the electoral safety of Congressional Districts 1 and 12 in the North Carolina Congressional districting plan of 1997, I use electoral history included in the 1998 reports of plaintiffs' expert Lee Mortimer and defendants' expert David W. Peterson as well as reconstituted election results for a number of recent statewide elections. In my scholarly work on state legislative elections, I consider any election in which one candidate gets 60 percent or more of the total vote among two candidates as being a non-competitive **[TABLE 10 relocated to 367ja]** **[*87]** election. Elections won by less than 60 percent are considered competitive. Students of congressional elections generally adopt the same threshold for distinguishing non-competitive from competitive elections.

83. Using electoral history data from the Peterson report for Congressional district 12, I find that within the boundaries of the district that Peterson estimates that Democratic candidates won over 60 percent of the vote in two 1988 elections and the 1990 U.S. Senate election between Jesse Helms and Harvey Gantt. All of these percentages exceed the level needed to have a competitive Congressional district. These three percentages all confirm that district 12 is overly safe for both white and African-American candidates of the Democratic party in general elections.

* * *

85. I have also reconstituted the precinct election returns **[*88]** from nine recent statewide elections: the 1990 U.S. Senate Democratic primary, runoff, and general elections; the 1992 State Auditor Democratic primary and general elections; the 1996 U.S. Senate and State Auditor general elections; and the 1998 U.S. Senate Democratic primary and general elections. By allocating the precincts within Districts 1 and 12 to both the 1997 and 1998 plans, I can determine how the various statewide candidates would have performed within the two sets of districts. These results are summarized in Exhibit E. Candidates of choice of African-American voters are winning the Democratic primaries or runoffs within both districts of both plans. And candidates of choice of African-American voters are usually winning more than 60 percent of the vote in the general elections within both districts under both plans. These analyses suggest that neither the 1997 nor the 1998 plan is narrowly tailored.

CONCLUSION

86. On the basis of my above analysis, I conclude:

1) that race was the predominant factor used by the state of North Carolina to draw the boundaries of the 1997 U.S. Congressional districts;

(2) that the state of North Carolina in creating the 1997 U.S. Congressional districting plan subordinated traditional race-neutral districting principles, such as compactness, contiguity, respect for political **[*89]** subdivisions or

communities defined by actual shared interests, to racial considerations;

(3) that the political explanation for the Plan A Congressional districts adopted in 1997 offered by state defendants and their expert Professor Peterson is flawed and can be characterized as a post-hoc rationalization for the districting plan;

. . . .

(5) that African-American voters residing in Districts 1 and 12 in the Act 586 plan of 1997 do not participate at lower rates than white voters in recent state-wide Democratic primary and runoff elections, indicating any evidence that a history of official discrimination has not led to politically significant differences in political participation in Democratic primary elections in the districts as drawn in 1997 (there are participation differences between African-American and white voters in general elections held within the two districts of the 1997 plan, indicating that candidates of choice of African-American voters will need some white cross-over support to win within the two **[*90]** districts;

(6) that more than sufficient levels of white crossover voting exists in the northeast and Piedmont regions of North Carolina such that fair U.S. Congressional districts can be drawn that do not need to be majority African-American in voting age population or voter registration in order to allow African-American voters a

reasonable opportunity to elect candidates of choice in U.S. Congressional elections; and

(7) that U.S. Congressional Districts 1 and 12 in the 1997 North Carolina plan are overly safe from the standpoint of giving a candidate of choice of African-American voters an opportunity to be elected, thus questioning whether the plan was narrowly tailored to satisfy a compelling state interest.

I declare under the penalty of perjury that the foregoing Declaration is true and correct.

Executed on this tenth day of September, 1999.

/s/ Ronald E. Weber, Ph.D.

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TABLE 1
(EXCERPTS)

Proportion of Total Population in Split Counties
by Congressional District for 1997 Plan (HB 586--Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Beaufort	1	23,714	14,659	61.8	8,948	37.7
Craven	1	25,279	14,207	56.2	10,920	43.2
Granville	1	20,717	10,480	50.6	10,106	48.8
Jones	1	8,553	5,045	59.0	3,461	40.5
Lenoir	1	31,016	11,887	38.3	18,959	61.1
Person	1	21,001	13,436	64.0	7,307	34.8
Pitt	1	49,584	23,676	47.7	25,373	51.2
Washington	1	10,750	5,499	51.2	5,207	48.4
Wayne	1	36,323	17,110	47.1	18,781	51.7
Wilson	1	43,517	21,008	48.2	22,181	51.0
Granville	2	17,628	12,589	71.4	4,803	27.2
Sampson	2	22,745	14,114	62.1	7,985	35.1
Wake	2	185,642	118,648	63.9	62,515	33.7
Wilson	2	22,544	19,615	87.0	2,715	12.0
Beaufort	3	18,569	14,290	76.9	4,246	22.9
Craven	3	56,334	44,453	78.9	10,196	18.1
Jones	3	861	642	74.6	216	25.1
Lenoir	3	26,258	22,435	85.4	3,580	13.6
Pitt	3	58,340	46,967	80.5	10,548	18.1
Washington	3	3,247	2,057	63.4	1,159	35.7
Wayne	3	68,343	52,062	76.2	15,012	22.0

TABLE 1 (Ctd.)
Proportion of Total Population in Split Counties by Congressional District for 1997 Plan (HB 586 - - Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Chatham	4	29,239	22,800	78.0	6,112	20.9
Person	4	9,179	7,304	79.6	1,799	19.6
Wake	4	237,738	205,363	86.4	25,548	10.7
Alamance	5	79,976	60,647	75.8	18,544	23.2
Forsyth	5	206,766	181,381	87.7	22,997	11.1
Alamance	6	28,237	25,726	91.1	2,278	8.1
Chatham	6	9,520	6,623	69.6	2,733	28.7
Davidson	6	59,993	57,135	95.2	2,468	4.1
Guilford	6	211,363	186,331	88.2	21,541	10.2
Rowan	6	77,499	70,819	91.4	5,979	7.7
Cumberland	7	127,913	94,213	73.7	27,363	21.4
Robeson	7	81,548	29,364	36.0	17,204	21.1
Sampson	7	24,552	16,159	65.8	7,701	31.4
Cumberland	8	146,653	75,856	51.7	60,133	41.0
Robeson	8	23,631	8,622	36.5	8,981	38.0
Mecklenburg	9	292,808	264,604	90.4	21,026	7.2
Iredell	10	54,472	48,438	88.9	5,526	10.1

TABLE 1 (Ctd.)
Proportion of Total Population in Split Counties by Congressional District for 1997 Plan (HB 586 - - Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Davidson	12	66,684	56,161	84.2	9,846	14.8
Forsyth	12	59,112	15,537	26.3	43,105	72.9
Guilford	12	136,057	63,253	46.5	70,114	51.5
Iredell	12	38,459	28,769	74.8	9,343	24.3
Mecklenburg	12	218,625	100,047	45.9	113,442	51.9
Rowan	12	33,106	21,032	63.5	11,794	35.6

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TABLE 2

Proportion of Total Population in Split Counties
by County for 1997 Congressional Districting Plan
(HB 586--Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Alamance	5	9,976	60,647	75.8	18,544	23.2
Alamance	6	28,237	25,726	91.1	2,278	8.1
Beaufort	1	23,714	14,659	61.8	8,948	37.7
Beaufort	3	18,569	14,290	76.9	4,246	22.9
Chatham	4	29,239	22,800	78.0	6,112	20.9
Chatham	6	9,520	6,623	69.6	2,733	28.7
Craven	1	25,279	14,207	56.2	10,920	43.2
Craven	3	56,334	44,453	78.9	10,196	18.1
Cumberland	7	127,913	94,213	73.7	27,363	21.4
Cumberland	8	146,653	75,856	51.7	60,133	41.0
Davidson	6	59,993	57,135	95.2	2,468	4.1
Davidson	12	66,684	56,161	84.2	9,846	14.8
Forsyth	5	206,766	181,381	87.7	22,997	11.1
Forsyth	12	59,112	15,537	26.3	43,105	72.9
Granville	1	20,717	10,480	50.6	10,106	48.8
Granville	2	17,628	12,589	71.4	4,803	27.2

TABLE 2 (Ctd.)

Proportion of Total Population in Split Counties
by County for 1997 Congressional Districting Plan
(HB 586--Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Guilford	6	211,363	186,331	88.2	21,541	10.2
Guilford	12	136,057	63,253	46.5	70,114	51.5
Iredell	10	54,472	48,438	88.9	5,526	10.1
Iredell	12	38,459	28,769	74.8	9,343	24.3
Jones	1	8,553	5,045	59.0	3,461	40.5
Jones	3	861	642	74.6	216	25.1
Lenoir	1	31,016	11,887	38.3	18,959	61.1
Lenoir	3	26,258	22,435	85.4	3,580	13.6
Mecklenburg	9	292,808	264,604	90.4	21,026	7.2
Mecklenburg	12	218,625	100,047	45.9	113,442	51.9
Person	1	21,001	13,436	64.0	7,307	34.8
Person	4	9,179	7,304	79.6	1,799	19.6
Pitt	1	49,584	23,676	47.7	25,373	51.2
Pitt	3	58,340	46,967	80.5	10,548	18.1
Robeson	7	81,548	29,364	36.0	17,204	21.1
Robeson	8	23,631	8,622	36.5	8,981	38.0

TABLE 2 (Ctd.)

Proportion of Total Population in Split Counties
by County for 1997 Congressional Districting Plan
(HB 586--Plan A)

County/City	CD	Total	White	%	African-Amer.	%
Rowan	6	77,499	70,819	91.4	5,979	7.7
Rowan	12	33,106	21,032	63.5	11,794	35.6
Sampson	2	22,745	14,114	62.1	7,985	35.1
Sampson	7	24,552	16,159	65.8	7,701	31.4
Wake	2	185,642	118,648	63.9	62,515	33.7
Wake	4	237,738	205,363	86.4	25,548	10.7
Washington	1	10,750	5,499	51.2	5,207	48.4
Washington	3	3,247	2,057	63.4	1,159	35.7
Wayne	1	36,323	17,110	47.1	18,781	51.7
Wayne	3	68,343	52,062	76.2	15,012	22.0
Wilson	1	43,517	21,008	48.2	22,181	51.0
Wilson	2	22,544	19,615	87.0	2,715	12.0

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TABLE 3

Proportion of Total Population in Split Municipalities and Census Designated Places by Congressional District for 1997 Plan (HB 586--Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Ayden	1	4,590	2,186	47.6	2,404	52.4
Battleboro*	1	280	99	35.4	181	64.6
Fremont	1	1,638	784	47.9	854	52.1
Goldsboro	1	25,734	9,833	38.2	15,901	61.8
Greenville	1	19,249	6,052	31.4	13,197	68.6
Kinston	1	16,328	2,968	18.2	13,360	81.8
New Bern	1	13,921	7,201	51.7	6,720	48.3
Rocky Mount*	1	17,057	2,584	15.1	14,473	84.9
Sharpsburg*	1	482	91	18.9	391	81.1
Trent Woods	1	299	299	100.0	0	0.0
Washington	1	9,073	4,915	54.2	4,158	45.8
Whitakers*	1	464	183	39.4	281	60.6
Wilson	1	26,127	9,355	35.8	16,772	64.2
Battleboro*	2	167	156	93.4	11	6.6
Clinton	2	7,313	4,024	55.0	3,289	45.0
Garner	2	3,008	2,232	74.2	776	25.8
Raleigh	2	107,979	60,848	56.4	47,131	43.6
Rocky Mount*	2	31,940	22,116	69.2	9,824	30.8
Sharpsburg*	2	1,054	861	81.7	193	18.3
Whitakers*	2	396	233	58.8	163	41.2
Wilson	2	10,803	10,249	94.9	554	5.1

TABLE 3 (Ctd.)

Proportion of Total Population in Split Municipalities and Census Designated Places by Congressional District for 1997 Plan (HB 586--Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Ayden	3	150	150	100.0	0	0.0
Fremont	3	72	10	13.9	62	86.1
Goldsboro	3	14,975	11,562	77.2	3,413	22.8
Greenville	3	25,723	23,583	91.7	2,140	8.3
Kinston	3	8,967	7,712	86.0	1,255	14.0
Mount Olive*	3	4,581	2,177	47.5	2,404	52.5
New Bern	3	3,442	2,599	75.5	843	24.5
Surf City*	3	317	314	99.1	3	0.9
Trent Woods	3	2,067	2,067	100.0	0	0.0
Washington	3	2	2	100.0	0	0.0
Garner	4	11,959	10,102	84.5	1,857	15.5
Mebane*	4	485	420	86.6	65	13.4
Raleigh	4	99,973	89,744	89.8	10,229	10.2
Burlington	5	36,339	27,580	75.9	8,759	24.1
Elkin*	5	3,720	3,373	90.7	347	9.3
Gibsonville*	5	1,480	1,332	90.0	148	10.0
Graham	5	7,234	5,857	81.0	1,377	19.0
High Point	5	6	6	100.0	0	0.0
Kernersville	5	10,836	10,230	94.4	606	5.6
Mebane*	5	4,269	3,382	79.2	887	20.8
Winston-Salem	5	89,215	74,885	83.9	14,330	16.1

TABLE 3 (Ctd.)

Proportion of Total Population in Split Municipalities and Census Designated Places by Congressional District for 1997 Plan (HB 586--Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Burlington	6	3,159	3,009	95.3	150	4.7
Gibsonville*	6	1,961	1,483	75.6	478	24.4
Graham	6	3,192	2,896	90.7	296	9.3
Greensboro	6	88,441	78,981	89.3	9,460	10.7
High Point	6	37,200	32,833	88.3	4,367	11.7
Kannapolis	6	8,476	7,149	84.3	1.327	15.7
Kernersville	6	0	0	0.0	0	0.0
Lexington	6	2,885	2,522	87.4	363	12.6
Salisbury	6	5,250	4,442	84.6	808	15.4
Spencer	6	8	6	75.0	2	25.0
Thomasville	6	6,909	6,249	90.4	660	9.6
Clinton	7	891	720	80.8	171	19.2
Fayetteville	7	44,988	34,279	76.2	10,709	23.8
Mount Olive*	7	1	0	0.0	1	100.0
Red Springs	7	58	58	100.0	0	0.0
Surf City*	7	653	652	99.8	1	0.2
Fayetteville	8	30,707	12,437	40.5	18,270	59.5
Kannapolis	8	21,220	17,205	81.1	4,015	18.9
Red Springs	8	3,736	1,771	47.4	1,965	52.6
Weddington*	8	3,803	3,695	97.2	108	2.8

TABLE 3 (Ctd.)

Proportion of Total Population in Split Municipalities and Census Designated Places by Congressional District for 1997 Plan
(HB 586--Plan A)

City/Town	CD	Total	Non-Af. Amer.	%	African-Amer.	%
Charlotte	9	213,515	196,172	91.9	17,343	8.1
Cornelius	9	308	304	98.7	4	1.3
Weddington*	9	0	0	0.0	0	0.0
Davidson*	10	0	0	0.0	0	0.0
Elkin*	10	70	62	88.6	8	11.4
Mooresville	10	0	0	0.0	0	0.0
Statesville	10	12,324	9,997	81.1	2,327	18.9
Troutman	10	1,419	1,024	72.2	395	27.8
Charlotte	12	182,419	73,935	40.5	108,484	59.5
Cornelius	12	2,273	1,752	77.1	521	22.9
Davidson*	12	4,046	3,407	84.2	639	15.8
Greensboro	12	95,080	42,236	44.4	52,844	55.6
High Point	12	32,290	15,677	48.6	16,613	51.4
Lexington	12	13,696	9,143	66.8	4,553	33.2
Mooresville	12	8,818	6,687	75.8	2,131	24.2
Salisbury	12	17,837	10,521	59.0	7,316	41.0
Spencer	12	3,211	2,488	77.5	723	22.5
Statesville	12	5,243	1,290	24.6	3,953	75.4
Thomasville	12	9,006	5,246	58.3	3,760	41.7
Troutman	12	74	74	100.0	0	0.0
Winston-Salem	12	54,270	12,272	22.6	41,998	77.4

TABLE 3 (Ctd.)

Proportion of Total Population in Split Municipalities and Census Designated Places by Congressional District for 1997 Plan
(HB 586--Plan A)

*City or town is split across a county boundary.

Source: North Carolina General Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

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TABLE 4
Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for 1997 Plan
(HB 586--Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Ayden	1	4,590	2,186	47.6	2,404	52.4
Ayden	3	150	150	100.0	0	0.0
Battleboro*	1	280	99	35.4	181	64.6
Battleboro*	2	167	156	93.4	11	6.6
Burlington	5	36,339	27,580	75.9	8,759	24.1
Burlington	6	3,159	3,009	95.3	150	4.7
Charlotte	9	213,515	196,172	91.9	17,343	8.1
Charlotte	12	182,419	73,935	40.5	108,484	59.5
Clinton	2	7,313	4,024	55.0	3,289	45.0
Clinton	7	891	720	80.8	171	19.2
Cornelius	9	308	304	98.7	4	1.3
Cornelius	12	2,273	1,752	77.1	521	22.9
Davidson*	10	0	0	0.0	0	0.0
Davidson*	12	4,046	3,407	84.2	639	15.8
Elkin*	5	3,720	3,373	90.7	347	9.3
Elkin*	10	70	62	88.6	8	11.4
Fayetteville	7	44,988	34,279	76.2	10,709	23.8
Fayetteville	8	30,707	12,437	40.5	18,270	59.5

TABLE 4 [cont'd]
Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for 1997 Plan
(HB 586--Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Fremont	1	1,638	784	47.9	854	52.1
Fremont	3	72	10	13.9	62	86.1
Garner	2	3,008	2,232	74.2	776	25.8
Garner	4	11,959	10,102	84.5	1,857	15.5
Gibsonville*	5	1,480	1,332	90.0	148	10.0
Gibsonville*	6	1,961	1,483	75.6	478	24.4
Goldsboro	1	25,734	9,833	38.2	15,901	61.8
Goldsboro	3	14,975	11,562	77.2	3,413	22.8
Graham	5	7,234	5,857	81.0	1,377	19.0
Graham	6	3,192	2,896	90.7	296	9.3
Greensboro	6	88,441	78,981	89.3	9,460	10.7
Greensboro	12	95,080	42,236	44.4	52,844	55.6
Greenville	1	19,249	6,052	31.4	13,197	68.6
Greenville	3	25,723	23,583	91.7	2,140	8.3
High Point	5	6	6	100.0	0	0.0
High Point	6	37,200	32,833	88.3	4,367	11.7
High Point	12	32,290	15,677	48.6	16,613	51.4
Kannapolis	6	8,476	7,149	84.3	1.327	15.7
Kannapolis	8	21,220	17,205	81.1	4,015	18.9

TABLE 4 [cont'd]
Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for 1997 Plan
(HB 586--Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Kernersville	5	10,836	10,230	94.4	606	5.6
Kernersville	6	0	0	0.0	0	0.0
Kinston	1	16,328	2,968	18.2	13,360	81.8
Kinston	3	8,967	7,712	86.0	1,255	14.0
Lexington	6	2,885	2,522	87.4	363	12.6
Lexington	12	13,696	9,143	66.8	4,553	33.2
Mebane*	4	485	420	86.6	65	13.4
Mebane*	5	4,269	3,382	79.2	887	20.8
Mooresville	10	0	0	0.0	0	0.0
Mooresville	12	8,818	6,687	75.8	2,131	24.2
Mount Olive*	3	4,581	2,177	47.5	2,404	52.5
Mount Olive*	7	1	0	0.0	1	100.0
New Bern	1	13,921	7,201	51.7	6,720	48.3
New Bern	3	3,442	2,599	75.5	843	24.5
Raleigh	2	107,979	60,848	56.4	47,131	43.6
Raleigh	4	99,973	89,744	89.8	10,229	10.2
Red Springs	7	58	58	100.0	0	0.0
Red Springs	8	3,736	1,771	47.4	1,965	52.6
Rocky Mount*	1	17,057	2,584	15.1	14,473	84.9
Rocky Mount*	2	31,940	22,116	69.2	9,824	30.8

TABLE 4 [cont'd]
Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for 1997 Plan
(HB 586--Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Salisbury	6	5,250	4,442	84.6	808	15.4
Salisbury	12	17,837	10,521	59.0	7,316	41.0
Sharpsburg*	1	482	91	18.9	391	81.1
Sharpsburg*	2	1,054	861	81.7	193	18.3
Spencer	6	8	6	75.0	2	25.0
Spencer	12	3,211	2,488	77.5	723	22.5
Statesville	10	12,324	9,997	81.1	2,327	18.9
Statesville	12	5,243	1,290	24.6	3,953	75.4
Surf City*	3	317	314	99.1	3	0.9
Surf City*	7	653	652	99.8	1	0.2
Thomasville	6	6,909	6,249	90.4	660	9.6
Thomasville	12	9,006	5,246	58.3	3,760	41.7
Trent Woods	1	299	299	100.0	0	0.0
Trent Woods	3	2,067	2,067	100.0	0	0.0
Troutman	12	74	74	100.0	0	0.0
Troutman	10	1,419	1,024	72.2	395	27.8
Washington	1	9,073	4,915	54.2	4,158	45.8
Washington	3	2	2	100.0	0	0.0
Weddington*	8	3,803	3,695	97.2	108	2.8
Weddington*	9	0	0	0.0	0	0.0
Whitakers*	1	464	183	39.4	281	60.6
Whitakers*	2	396	233	58.8	163	41.2

TABLE 4 [cont'd]
Proportion of Total Population in Split Municipalities and Census Designated places by City or Town for 1997 Plan
(HB 586--Plan A)

City/Town	CD	Total	White	%	African-Amer.	%
Wilson	1	26,127	9,355	35.8	16,772	64.2
Wilson	2	10,803	10,249	94.9	554	5.1
Winston-Salem	5	89,215	74,885	83.9	14,330	16.1
Winston-Salem	12	54,270	12,272	22.6	41,998	77.4

*City or town is split across a county boundary.

Source: North Carolina General Assembly, Information Systems Division. All information is based on that in the General Assembly's apportionment system. Provided by Dan Frey, GIS Analyst.

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TABLE 5

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data
of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
DAVIDSON											
Thomasville No. 3 *	2910	852	29.28	2039	70.07	2100	683	32.52	1409	67.10	12
Ward No. 1 *	2777	805	28.99	1942	69.93	2055	649	31.58	1389	67.59	12
Ward No. 5 *	2448	807	32.97	1610	65.77	1678	620	36.95	1040	61.98	12
Thomasville No. 2 *	2709	1830	67.55	843	31.12	2025	1426	70.42	576	28.44	12
Thomasville No. 1 *	3417	2506	73.34	878	25.70	2685	2036	75.83	627	23.35	12
Ward No. 4 *	2403	1906	79.32	426	17.73	1910	1567	82.04	299	15.65	12
Cotton *	4475	3807	85.07	628	14.03	3251	2779	85.48	451	13.87	6
Ward No. 2 *	3114	2612	83.88	425	13.65	2405	2100	87.32	262	10.89	12
Ward No. 6 *	2896	2502	86.40	363	12.53	2300	2031	88.30	247	10.74	6
Thomasville No. 5 *	3523	3149	89.38	353	10.02	2780	2517	90.54	246	8.85	6
Thomasville No. 4 *	3377	3034	89.84	307	9.09	2539	2308	90.90	212	8.35	6
Midway *	9897	9116	92.11	751	7.59	7497	6901	92.05	570	7.60	12
Southmont *	3278	3053	93.14	202	6.16	2486	2313	93.04	158	6.36	6
Yadkin College *	619	568	91.76	37	5.98	454	418	92.07	27	5.95	12
Ward No. 3 *	2954	2684	90.86	150	5.08	2358	2188	92.79	97	4.11	12
Lexington No. 1 *	2122	2000	94.25	100	4.71	1664	1582	95.07	65	3.91	6
Holly Grove *	3586	3425	95.51	139	3.88	2763	2606	94.32	137	4.96	6
Tyro *	4023	3865	96.07	144	3.58	3035	2906	95.75	120	3.95	12
Boone *	3383	3236	95.65	121	3.58	2514	2404	95.62	93	3.70	12
Arcadia *	6400	6148	96.06	184	2.88	4762	4594	96.47	124	2.60	12
Reeds *	2353	2282	96.98	65	2.76	1848	1792	96.97	51	2.76	12
Thomasville No. 7 *	2703	2617	96.82	74	2.74	2092	2032	97.13	51	2.44	6
Welcome *	4723	4576	96.89	124	2.63	3596	3501	97.36	78	2.17	6
Abbotts Creek *	6285	6117	97.33	145	2.31	4802	4683	97.52	99	2.06	12
Hampton *	614	596	97.07	14	2.28	454	438	96.48	12	2.64	12
Central *	1381	1347	97.54	28	2.03	1129	1106	97.96	19	1.68	6

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
DAVIDSON (cont'd)											
Lexington No. 4 *	2054	2007	97.71	34	1.66	1563	1531	97.95	21	1.34	12
Lexington No. 2 *	2278	2202	96.66	34	1.49	1707	1664	97.48	19	1.11	6
Thomasville No. 10 *	3511	3446	98.15	47	1.34	2710	2657	98.04	39	1.44	6
Reedy Creek *	3563	3531	99.10	25	.70	2658	2636	99.17	16	.60	12
Silver Hill *	4658	4607	98.91	29	.62	3500	3465	99.00	20	.57	6
Thomasville No. 9 *	4841	4784	98.82	0	.41	3810	3767	98.87	16	.42	6
Thomasville No. 8 *	3811	3753	98.48	3	.34	2982	2942	98.66	7	.23	12
Liberty *	3363	3345	99.46	10	.30	2451	2437	99.43	6	.24	6
Emmons *	2467	2450	99.31	5	.20	1885	1871	99.26	5	.27	6
Silver Valley *	2579	2562	99.34	5	.19	1892	1882	99.47	3	.16	6
Alleghany *	506	506	100.00	0	0.00	400	400	100.00	0	0.00	6
Denton *	1292	1292	00.00	0	0.00	989	989	100.00	0	0.00	6
Healing Springs *	1644	1642	99.88	0	0.00	1289	1287	99.84	0	0.00	6
Jackson Hill *	790	789	99.87	0	0.00	599	598	99.83	0	0.00	6
Lexington No. 3 *	950	940	98.95	0	0.00	740	735	99.32	0	0.00	12
Total	126677	113296	89.44	12314	9.72	96357	87041	90.33	8611	8.94	
FORSYTH											
M. L. King Recreatio	3134	19	.61	3113	99.33	1972	15	.76	1955	99.14	12
14th Street Recreati	2344	12	.51	2328	99.32	1804	11	.61	1789	99.17	12
Mt. Sinai Church *	1711	20	1.17	1679	98.13	1160	16	1.38	1137	98.02	12
Ashley Middle School	2045	14	.68	2002	97.90	1460	12	.82	1429	97.88	12

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
FORSYTH (cont'd)											
Happy Hill Recreatio	3386	67	1.98	3310	97.76	2411	49	2.03	2357	97.76	12
Carver High School *	4317	104	2.41	4209	97.50	3313	92	2.78	3217	97.10	12
Kennedy Middle Schoo	3165	189	5.97	2970	93.84	2319	173	7.46	2141	92.32	12
East Winston Library	2895	197	6.80	2686	92.78	2184	185	8.47	1990	91.12	12
Lowrance Middle Scho	3102	318	10.25	2781	89.65	2222	258	11.61	1962	88.30	12
Memorial Coliseum *	2746	583	21.23	2133	77.68	2123	525	24.73	1576	74.23	12
Winston Lake Family	3662	816	22.28	2803	76.54	2619	658	25.12	1936	73.92	12
Forest Pk. Elementar	2968	745	25.10	2200	74.12	2144	619	28.87	1509	70.38	12
Forest Hill Fire Sta	3022	804	26.60	2192	72.53	2246	679	30.23	1551	69.06	12
St. Andrews United M	4101	1610	39.26	2451	59.77	2975	1335	44.87	1616	54.32	12
Easton Elementary Sc	2606	1094	41.98	1496	57.41	1885	871	46.21	1003	53.21	12
Brown/Douglas Recrea	5643	2896	51.32	2658	47.10	4647	2653	57.09	1930	41.53	5
Mineral Springs F. S	3743	2030	54.23	1653	44.16	2667	1599	59.96	1028	38.55	12
Hill Middle School *	2621	1457	55.59	1134	43.27	2000	1214	60.70	771	38.55	12
Bishop McGuinness *	2775	1571	56.61	1104	39.78	2131	1291	60.58	766	35.95	5
New Hope United Meth	4398	2758	62.71	1584	36.02	3403	2293	67.38	1073	31.53	5
Hanes Community Cent	6044	4029	66.66	1938	32.06	5473	3825	69.89	1576	28.80	5
Trinity Moravian Chu	2702	1787	66.14	858	31.75	2156	1527	70.83	588	27.27	12
Old Town Presbyteria	2860	1966	68.74	856	29.93	2247	1609	71.61	610	27.15	5
Middlefork #2 *	3449	2426	70.34	1004	29.11	2688	1961	72.95	714	26.56	5
Brunson Elementary S	2303	1630	70.78	641	27.83	1986	1448	72.91	514	25.88	5
Broadbay #2 *	4842	3671	75.82	1107	22.86	3721	2954	79.39	725	19.48	12
Middlefork #3 *	5497	4344	79.02	1121	20.39	4202	3373	80.27	805	19.16	5
Latham Elementary Sc	2855	2249	78.77	566	19.82	2332	1895	81.26	406	17.41	5
Broadbay #1 *	3128	2497	79.83	618	19.76	2494	2023	81.11	462	18.52	5
South Fork Elem Scho	3995	3254	81.45	682	17.07	3108	2615	84.14	452	14.54	5

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data
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COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
FORSYTH (cont'd)											
Parkland High School	2761	2218	80.33	465	16.84	2191	1802	82.25	335	15.29	5
Christ Moravian Chur	2600	2131	81.96	404	15.54	2215	1866	84.24	302	13.63	5
Bethania #3 *	3833	3285	85.70	505	13.18	3001	2624	87.44	346	11.53	5
Old Town #3 *	2062	1785	86.57	271	13.14	1611	1418	88.02	187	11.61	5
Greek Orthodox Churc	2130	1827	85.77	278	13.05	1739	1532	88.10	188	10.81	5
Salem Chapel #2 *	2958	2540	85.87	384	12.98	2301	1984	86.22	294	12.78	5
Country Club Fire St	3451	2871	83.19	442	12.81	2753	2324	84.42	331	12.02	5
Covenant Presbyteria	2160	1856	85.93	273	12.64	1670	1489	89.16	163	9.76	5
Bethabara Moravian C	2444	2137	87.44	275	11.25	2152	1921	89.27	203	9.43	5
Bethania #2 *	3580	3173	88.63	383	10.70	2670	2392	89.59	261	9.78	5
Bethania #1 *	5274	4717	89.44	538	10.20	4098	3720	90.78	362	8.83	5
Forsyth Tech W. Camp	3122	2765	88.57	310	9.93	2597	2346	90.34	213	8.20	5
Parkway United Churc	2359	2095	88.81	228	9.67	1873	1690	90.23	157	8.38	5
First Christian Chur	1897	1683	88.72	171	9.01	1669	1469	88.02	165	9.89	5
Calvary Baptist Chur	4318	3883	89.93	386	8.94	3578	3241	90.58	296	8.27	5
Philo Middle School	2172	1976	90.98	169	7.78	1759	1622	92.21	115	6.54	5
Bible Wesleyan Churc	2619	2390	91.26	198	7.56	2136	1976	92.51	140	6.55	5
Mt. Tabor High Schoo	2242	2050	91.44	165	7.36	1783	1652	92.65	112	6.28	5
Old Town #2 *	2990	2749	91.94	215	7.19	2271	2111	92.95	144	6.34	5
Vienna #1 *	3026	2770	91.54	211	6.97	2246	2077	92.48	144	6.41	5
Old Richmond *	4694	4364	92.97	316	6.73	3556	3322	93.42	227	6.38	5
St. Anne's Episcopal	2371	2169	91.48	159	6.71	1876	1737	92.59	109	5.81	5
Belews Creek *	4357	4050	92.95	287	6.59	3227	2998	92.90	215	6.66	5
Kernersville #1 *	5482	5013	91.44	359	6.55	4234	3901	92.14	267	6.31	5
South Fork #2 *	3534	3302	93.44	191	5.40	2766	2587	93.53	145	5.24	5

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data
of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
FORSYTH (cont'd)											
South Fork #3 *	4543	4255	93.66	235	5.17	3585	3395	94.70	153	4.27	5
Kernersville #3 *	5530	5196	93.96	279	5.05	3999	3772	94.32	188	4.70	5
Vienna #2 *	3019	2861	94.77	145	4.80	2289	2186	95.50	94	4.11	5
Kernersville #4 *	5342	5046	94.46	247	4.62	4125	3925	95.15	165	4.00	5
Salem Chapel #1 *	3140	2987	95.13	138	4.39	2399	2296	95.71	91	3.79	5
Clemmonsville #3 *	3066	2892	94.32	127	4.14	2178	2058	94.49	90	4.13	5
Vienna #3 *	3405	3259	95.71	128	3.76	2525	2421	95.88	90	3.56	5
Lewisville #3 *	2694	2570	95.40	98	3.64	1993	1907	95.68	69	3.46	5
Ardmore Baptist Chur	1673	1572	93.96	59	3.53	1400	1316	94.00	51	3.64	5
Lewisville #2 *	4079	3913	95.93	134	3.29	3032	2917	96.21	92	3.03	5
Abbotts Creek #2 *	4037	3873	95.94	132	3.27	3065	2932	95.66	108	3.52	5
Bolton Swimming Cent	2889	2748	95.12	93	3.22	2390	2295	96.03	62	2.59	5
Abbotts Creek #3 *	3690	3569	96.72	108	2.93	2846	2766	97.19	72	2.53	5
Lewisville #1 *	5005	4830	96.50	140	2.80	3740	3605	96.39	109	2.91	5
Clemmonsville #2 *	3404	3286	96.53	92	2.70	2595	2514	96.88	64	2.47	5
Reynolds High School	2095	2030	96.90	56	2.67	1688	1639	97.10	43	2.55	5
Kernersville #2 *	5693	5520	96.96	122	2.14	4153	4039	97.25	82	1.97	5
Miller Park Recreati	2091	2019	96.56	44	2.10	1812	1756	96.91	36	1.99	5
Abbotts Creek #1 *	4655	4526	97.23	96	2.06	3547	3463	97.63	63	1.78	5
Trinity United Metho	2547	2479	97.33	47	1.85	2129	2075	97.46	34	1.60	5
Clemmonsville #1 *	2359	2296	97.33	43	1.82	1928	1880	97.51	31	1.61	5
Polo Park Recreation	1689	1643	97.28	30	1.78	1391	1360	97.77	21	1.51	5
Jefferson Elementary	2434	2351	96.59	36	1.48	1712	1661	97.02	26	1.52	5
Sherwood Forest Elem	972	958	98.56	6	.62	766	755	98.56	6	.78	5
Messiah Moravian Chu	1536	1506	98.05	6	.39	1195	1175	98.33	5	.42	5
Summit School *	1775	1767	99.55	1	.06	1383	1377	99.57	1	.07	5

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

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FORSYTH (cont'd)											
Whitaker Elementary	2021	2010	99.46	0	0.00	1541	1532	99.42	0	0.00	5
Total	265878	196918	74.06	66102	24.86	205470	156596	76.21	46855	22.80	
GUILFORD											
GB-29 *	3067	10	.33	3056	99.64	2393	8	.33	2384	99.62	12
GB-07 *	2755	27	.98	2726	98.95	2060	26	1.26	2034	98.74	12
GB-05 *	4503	35	.78	4436	98.51	4134	33	.80	4076	98.60	12
HP-06 *	2423	34	1.40	2369	97.77	1681	22	1.31	1644	97.80	12
GB-06 *	4363	108	2.48	4228	96.91	2977	94	3.16	2863	96.17	12
GB-19 *	4006	178	4.44	3806	95.01	2744	144	5.25	2587	94.28	12
GB-30 *	2940	121	4.12	2755	93.71	2374	101	4.25	2227	93.81	12
GB-09 *	4971	271	5.45	4638	93.30	3121	217	6.95	2868	91.89	12
GB-08 *	5186	368	7.10	4799	92.54	4026	321	7.97	3692	91.70	12
HP-12 *	5416	935	17.26	4424	81.68	3697	778	21.04	2884	78.01	12
HP-07 *	2740	593	21.64	2110	77.01	1891	505	26.71	1357	71.76	12
HP-11 *	1638	351	21.43	1256	76.68	1167	308	26.39	833	71.38	12
HP-22 *	2837	835	29.43	1986	70.00	2046	662	32.36	1374	67.16	12
GB-44 *	4225	1306	30.91	2877	68.09	3087	1090	35.31	1968	63.75	12
GB-45 *	1571	487	31.00	1055	67.15	1150	381	33.13	747	64.96	12
GB-03 *	3905	1458	37.34	2363	60.51	2953	1219	41.28	1683	56.99	12
HP-05 *	4102	1710	41.69	2333	56.87	3353	1535	45.78	1776	52.97	12
GB-25 *	4292	2054	47.86	2058	47.95	3292	1712	52.00	1459	44.32	12
GB-42 *	5946	3051	51.31	2791	46.94	4494	2431	54.09	1983	44.13	12

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

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GUILFORD (cont'd)											
GB-35C *	2421	1234	50.97	1050	43.37	1710	955	55.85	681	39.82	6
GB-04 *	2580	1446	56.05	1063	41.20	2182	1271	58.25	849	38.91	12
North Mad. *	2016	1252	62.10	734	36.41	1501	954	63.56	525	34.98	6
GB-33 *	5732	3832	66.85	1796	31.33	4426	3010	68.01	1347	30.43	12
GB-24A *	3192	2081	65.19	995	31.17	2528	1732	68.51	711	28.13	12
GB-26A *	3448	2371	68.76	992	28.77	2645	1885	71.27	699	26.43	12
GB-26B *	2668	1835	68.78	756	28.34	2013	1462	72.63	508	25.24	12
HP-17 *	4471	3167	70.83	1260	28.18	3426	2578	75.25	822	23.99	6
GB-01 *	4715	3281	69.59	1326	28.12	3724	2669	71.67	981	26.34	12
HP-03 *	1699	1194	70.28	474	27.90	1400	1025	73.21	351	25.07	12
GIB-G *	1961	1472	75.06	478	24.38	1454	1144	78.68	301	20.70	6
HP-15 *	2174	1612	74.15	516	23.74	1630	1300	79.75	294	18.04	12
GB-36 *	5607	4172	74.41	1303	23.24	3915	3026	77.29	797	20.36	12
GB-15 *	3811	2687	70.51	858	22.51	2951	2210	74.89	579	19.62	12
GB-23 *	5084	3672	72.23	1124	22.11	4047	3023	74.70	836	20.66	6
GB-24B *	4654	3444	74.00	1020	21.92	3754	2874	76.56	739	19.69	12
HP-18 *	4395	3337	75.93	957	21.77	3111	2573	82.71	473	15.20	6
Gibsonville *	1810	1420	78.45	384	21.22	1441	1135	78.76	300	20.82	6
GB-43 *	2666	2089	78.36	550	20.63	2162	1770	81.87	374	17.30	6
GB-02 *	3667	2817	76.82	756	20.62	3096	2440	78.81	596	19.25	12
HP-13 *	2565	1940	75.63	522	20.35	2036	1591	78.14	358	17.58	12
North Sumner *	2552	2018	79.08	498	19.51	2008	1602	79.78	381	18.97	12
HP-09 *	3103	2447	78.86	593	19.11	2434	2034	83.57	365	15.00	6
North Monroe *	2915	2338	80.21	544	18.66	2126	1697	79.82	406	19.10	6
GB-38 *	3040	2421	79.64	564	18.55	2638	2100	79.61	497	18.84	6
HP-21 *	4197	3329	79.32	765	18.23	2943	2402	81.62	474	16.11	6

TABLE 5 cont'd

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Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

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GUILFORD (cont'd)											
South Jeff. *	3618	2949	81.51	639	17.66	2877	2356	81.89	496	17.24	6
GB-11 *	2015	1625	80.65	354	17.57	1828	1466	80.20	327	17.89	6
GB-22 *	4212	3425	81.32	692	16.43	3414	2809	82.28	535	15.67	6
GB-37B *	3299	2702	81.90	542	16.43	2810	2340	83.27	424	15.09	6
GB-32 *	2214	1765	79.72	363	16.40	1746	1391	79.67	291	16.67	6
North Jeff. *	5098	4285	84.05	775	15.20	3954	3316	83.86	608	15.38	6
GB-14 *	5417	4478	82.67	823	15.19	5307	4385	82.63	809	15.24	6
HP-10 *	2125	1711	80.52	320	15.06	1647	1393	84.58	195	11.84	12
HP-20 *	3199	2685	83.93	469	14.66	2355	1966	83.48	360	15.29	6
GB-40A *	3604	3008	83.46	517	14.35	3107	2631	84.68	414	13.32	6
GB-40B *	3120	2584	82.82	446	14.29	2346	1951	83.16	333	14.19	6
South Madison *	1742	1500	86.11	230	13.20	1303	1123	86.19	171	13.12	6
South Washington *	852	739	86.74	109	12.79	669	585	87.44	80	11.96	6
GB-10 *	2163	1836	84.88	266	12.30	1749	1499	85.71	203	11.61	6
HP-02 *	1065	921	86.48	128	12.02	939	820	87.33	107	11.40	12
GB-18 *	3276	2784	84.98	391	11.94	2537	2229	87.86	242	9.54	12
South Monroe *	5140	4489	87.33	609	11.85	3887	3449	88.73	404	10.39	6
GB-35B *	2402	2100	87.43	274	11.41	1797	1599	88.98	181	10.07	6
Whitsett *	1721	1512	87.86	192	11.16	1323	1154	87.23	159	12.02	6
Fentress-1 *	5276	4689	88.87	545	10.33	3996	3587	89.76	384	9.61	6
South Center Grove *	2407	2128	88.41	222	9.22	1802	1597	88.62	163	9.05	6
GB-17 *	3552	3021	85.05	323	9.09	3077	2673	86.87	266	8.64	6
GB-37A *	2524	2258	89.46	216	8.56	2039	1838	90.14	165	8.09	6
Stokesdale *	2134	1932	90.53	169	7.92	1640	1487	90.67	131	7.99	6
Jamestown-1 *	2606	2333	89.52	205	7.87	1971	1771	89.85	153	7.76	12
GB-27C *	2095	1906	90.98	150	7.16	1608	1486	92.41	94	5.85	6

TABLE 5 cont'd

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GUILFORD (cont'd)											
GB-41B *	2316	2111	91.15	158	6.82	1731	1568	90.58	131	7.57	6
HP-08 *	4156	3808	91.63	272	6.54	3342	3098	92.70	190	5.69	6
Friendship-1 *	6459	5898	91.31	418	6.47	5191	4739	91.29	340	6.55	6
Oak Ridge *	2976	2751	92.44	188	6.32	2122	1960	92.37	143	6.74	6
GB-28 *	2645	2461	93.04	166	6.28	2055	1925	93.67	115	5.60	6
GB-24C *	2133	1911	89.59	132	6.19	1526	1379	90.37	95	6.23	6
GB-35A *	2056	1913	93.04	117	5.69	1503	1398	93.01	92	6.12	6
Friendship-2 *	2436	2271	93.23	128	5.25	1974	1849	93.67	98	4.96	6
North Washington *	1195	1123	93.97	56	4.69	915	867	94.75	39	4.26	6
GB-41A *	1896	1773	93.51	86	4.54	1492	1405	94.17	62	4.16	6
HP-16 *	4111	3876	94.28	185	4.50	3322	3148	94.76	140	4.21	6
GB-34A *	1567	1471	93.87	61	3.89	1159	1092	94.22	43	3.71	6
GB-34B *	2006	1894	94.42	76	3.79	1504	1425	94.75	52	3.46	6
HP-19 *	1485	1420	95.62	53	3.57	1269	1228	96.77	33	2.60	12
Bruce *	6491	6209	95.66	231	3.56	4917	4710	95.79	6 177	3.60	
North Center Grove *	1569	1511	96.30	53	3.38	1200	1154	96.17	43	3.58	6
HP-24 *	3363	3221	95.78	106	3.15	2525	2418	95.76	80	3.17	6
Fentress-2 *	4472	4296	96.06	138	3.09	3599	3481	96.72	89	2.47	6
HP-23 *	2692	2568	95.39	80	2.97	2210	2126	96.20	57	2.58	6
GB-27B *	1921	1831	95.31	57	2.97	1434	1373	95.75	40	2.79	6
HP-14 *	1323	1232	93.12	39	2.95	997	934	93.68	30	3.01	6
Greene *	2420	2338	96.61	64	2.64	1837	1773	96.52	49	2.67	6
South Sumner *	5950	5747	96.59	152	2.55	4618	4458	96.54	118	2.56	6
GB-39 *	3279	3157	96.28	82	2.50	2654	2566	96.68	56	2.11	6
Deep River *	4680	4531	96.82	116	2.48	3559	3433	96.46	106	2.98	6
GB-13 *	2533	2452	96.80	58	2.29	2163	2097	96.95	47	2.17	6

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
GUILFORD (cont'd)											
Clay *	6017	5835	96.98	124	2.06	4568	4442	97.24	84	1.84	6
GB-12 *	2897	2835	97.86	50	1.73	2287	2229	97.46	46	2.01	6
GB-16 *	3163	3075	97.22	53	1.68	2622	2555	97.44	44	1.68	6
Jamestown-2 *	4000	3901	97.53	61	1.53	3142	3073	97.80	44	1.40	12
GB-20 *	2847	2781	97.68	43	1.51	2279	2232	97.94	29	1.27	6
GB-27A *	2015	1967	97.62	21	1.04	1534	1502	97.91	16	1.04	6
HP-04 *	2759	2722	98.66	27	.98	2128	2104	98.87	17	.80	6
HP-01 *	1550	1521	98.13	15	.97	1253	1233	98.40	13	1.04	12
GB-31 *	2352	2309	98.17	21	.89	1983	1949	98.29	19	.96	6
GB-21 *	3059	3017	98.63	25	.82	2443	2412	98.73	19	.78	6
Jamestown-3 *	3726	3642	97.75	30	.81	2978	2920	98.05	20	.67	6
Total	347420	249584	71.84	91655	26.38	269704	199205	73.86	66194	24.54	
IREDELL											
Statesville #3 *	4220	1814	42.99	2373	56.23	2979	1405	47.16	1550	52.03	12
Statesville #6 *	4354	1909	43.84	2418	55.54	3079	1514	49.17	1547	50.24	12
Coddle Creek #2 *	3997	2477	61.97	1468	36.73	2943	1938	65.85	966	32.82	12
Cool Springs *	1823	1393	76.41	419	22.98	1343	1056	78.63	283	21.07	12
Turnersburg *	2392	1853	77.47	522	21.82	1817	1429	78.65	377	20.75	10
Statesville #2 *	3972	3116	78.45	758	19.08	3154	2605	82.59	486	15.41	10
Statesville #5 *	3755	3052	81.28	674	17.95	3000	2521	84.03	462	15.40	10
Statesville #4 *	3643	2999	82.32	593	16.28	2924	2486	85.02	404	13.82	10

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
IREDELL (cont'd)											
Fallstown *	5386	4499	83.53	862	16.00	4056	3471	85.58	567	13.98	10
Chambersburg *	8121	6858	84.45	1168	14.38	5943	5114	86.05	766	12.89	12
Coddle Creek #1 *	3400	2884	84.82	464	13.65	2593	2219	85.58	338	13.04	12
Statesville #1 *	3859	3269	84.71	503	13.03	3063	2671	87.20	345	11.26	10
Coddle Creek #3 *	4246	3750	88.32	458	10.79	3275	2944	89.89	306	9.34	12
Barringer *	4070	3620	88.94	435	10.69	3007	2700	89.79	297	9.88	12
Eagle Mills *	1621	1438	88.71	167	10.30	1237	1106	89.41	121	9.78	10
Concord *	4288	3981	92.84	299	6.97	3282	3050	92.93	225	6.86	10
Bethany *	5151	4759	92.39	358	6.95	3856	3551	92.09	278	7.21	10
Shiloh *	6042	5612	92.88	408	6.75	4589	4265	92.94	303	6.60	10
Sharpesburg *	2073	1971	95.08	77	3.71	1583	1506	95.14	60	3.79	10
Coddle Creek #4 *	4228	4064	96.12	140	3.31	3187	3066	96.20	100	3.14	12
Davidson *	8071	7814	96.82	214	2.65	6397	6217	97.19	154	2.41	10
Union Grove *	1672	1612	96.41	44	2.63	1246	1195	95.91	37	2.97	10
Olin *	1372	1308	95.34	33	2.41	1031	987	95.73	23	2.23	10
New Hope *	1175	1155	98.30	14	1.19	912	899	98.57	11	1.21	10
Total	92931	77207	83.08	14869	16.00	70496	59915		84.99	10006	14.19
MECKLENBURG											
Charlotte Pct. 54 *	2049	8	.39	2037	99.41	1529	3	.20	1523	99.61	12
Charlotte Pct. 55 *	2674	9	.34	2657	99.36	2073	7	.34	2061	99.42	12
Charlotte Pct. 25 *	3416	15	.44	3393	99.33	2595	12	.46	2577	99.31	12
Charlotte Pct. 56 *	5848	54	.92	5772	98.70	3888	46	1.18	3831	98.53	12

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
MECKLENBURG (cont'd)											
Charlotte Pct. 16 *	2522	32	1.27	2485	98.53	1873	24	1.28	1846	98.56	12
Charlotte Pct. 16 * (Pt)	1009	5	.50	993	98.41	719	2	.28	711	98.89	12
Charlotte Pct. 12 *	5123	89	1.74	5023	98.05	3828	74	1.93	3745	97.83	12
Charlotte Pct. 31 *	4789	129	2.69	4633	96.74	3112	115	3.70	2981	95.79	12
Charlotte Pct. 22 *	4443	174	3.92	4255	95.77	3057	167	5.46	2882	94.28	12
Charlotte Pct. 52 *	4296	166	3.86	4109	95.65	3212	135	4.20	3063	95.36	12
Charlotte Pct. 42 *	4732	349	7.38	4355	92.03	3358	305	9.08	3035	90.38	12
Charlotte Pct. 13 *	3511	235	6.69	3169	90.26	2213	223	10.08	1932	87.30	12
Charlotte Pct. 14 *	4648	321	6.91	4061	87.37	3194	268	8.39	2773	86.82	12
Charlotte Pct. 77 * (Pt)	3460	439	12.69	2987	86.33	2308	350	15.16	1928	83.54	12
Charlotte Pct. 39 *	5468	786	14.37	4496	82.22	3431	564	16.44	2753	80.24	12
Charlotte Pct. 27 *	5261	932	17.72	4231	80.42	3708	761	20.52	2874	77.51	12
Charlotte Pct. 60	3226	712	22.07	2446	75.82	2266	595	26.26	1624	71.67	12
Charlotte Pct. 17 *	3801	970	25.52	2763	72.69	2667	830	31.12	1797	67.38	12
Charlotte Pct. 82 *	6053	1647	27.21	4263	70.43	4568	1440	31.52	3013	65.96	12
Charlotte Pct. 41 *	3875	1239	31.97	2517	64.95	2672	915	34.24	1681	62.91	12
LC2	3357	1252	37.30	2098	62.50	2522	983	38.98	1534	60.82	12
Charlotte Pct. 104 *	4877	1666	34.16	3042	62.37	3433	1387	40.40	1932	56.28	12
Charlotte Pct. 11 *	3999	1502	37.56	2443	61.09	3363	1436	42.70	1890	56.20	12
Charlotte Pct. 24 *	3854	1544	40.06	2272	58.95	2811	1234	43.90	1552	55.21	12
Charlotte Pct. 23 *	3705	1659	44.78	1980	53.44	2606	1326	50.88	1237	47.47	12
Charlotte Pct. 3	4613	2018	43.75	2393	51.88	3284	1596	48.60	1555	47.35	12
Charlotte Pct. 26 *	4281	2047	47.82	2177	50.85	3010	1623	53.92	1352	44.92	12
Charlotte Pct. 78 *	5335	2534	47.50	2682	50.27	3731	1976	52.96	1680	45.03	12
Charlotte Pct. 98 *	5384	2756	51.19	2421	44.97	4094	2287	55.86	1669	40.77	12
Charlotte Pct. 40 *	4679	2579	55.12	2010	42.96	3346	2022	60.43	1259	37.63	12

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
MECKLENBURG (cont'd)											
Charlotte Pct. 28 *	3848	2262	58.78	1431	37.19	2956	1859	62.89	989	33.46	12
Charlotte Pct. 30 *	2453	1460	59.52	869	35.43	1881	1195	63.53	613	32.59	12
XMC1	924	599	64.83	324	35.06	684	453	66.23	230	33.63	12
Charlotte Pct. 46 *	4666	2850	61.08	1608	34.46	3674	2383	64.86	1135	30.89	12
Charlotte Pct. 43 *	4062	2680	65.98	1228	30.23	3054	2140	70.07	802	26.26	12
Charlotte Pct. 53 *	4582	3036	66.26	1358	29.64	3568	2507	70.26	929	26.04	12
Charlotte Pct. 97 *	5917	4066	68.72	1664	28.12	4651	3436	73.88	1080	23.22	12
Charlotte Pct. 35 *	1901	1461	76.85	424	22.30	1511	1212	80.21	287	18.99	9
Charlotte Pct. 29 *	3615	2675	74.00	781	21.60	2825	2173	76.92	538	19.04	12
Charlotte Pct. 2 *	5898	4520	76.64	1213	20.57	5118	4062	79.37	934	18.25	12
Charlotte Pct. 15 *	3816	2947	77.23	743	19.47	3085	2489	80.68	506	16.40	12
Charlotte Pct. 84 *	7719	5938	76.93	1487	19.26	6071	4839	79.71	1024	16.87	9
Charlotte Pct. 81 *	4372	3478	79.55	831	19.01	3329	2756	82.79	526	15.80	12
Charlotte Pct. 95 *	7442	5837	78.43	1400	18.81	5576	4506	80.81	927	16.62	9
Charlotte Pct. 62 *	4277	3266	76.36	799	18.68	3264	2566	78.62	550	16.85	9
Charlotte Pct. 5 *	2645	2070	78.26	488	18.45	2294	1823	79.47	404	17.61	9
Charlotte Pct. 9 *	3241	2558	78.93	559	17.25	2878	2244	77.97	521	18.10	12
Charlotte Pct. 6 *	4522	3560	78.73	775	17.14	3609	2923	80.99	549	15.21	9
COR *	706	3041	82.06	626	16.89	2743	2279	83.08	441	16.08	12
Charlotte Pct. 7 *	2460	1991	80.93	414	16.83	2088	1729	82.81	318	15.23	9
Charlotte Pct. 63 *	5113	4100	80.19	843	16.49	3933	3240	82.38	575	14.62	9
Charlotte Pct. 45 *	3673	2871	78.16	589	16.04	2922	2346	80.29	432	14.78	9
DAV *	4280	3529	82.45	669	15.63	3675	3099	84.33	510	13.88	12
Charlotte Pct. 64 *	7206	5880	81.60	1076	14.93	5978	4995	83.56	790	13.22	9
HUN *	5069	4305	84.93	725	14.30	3872	3316	85.64	524	13.53	12
Charlotte Pct. 80 *	4007	3350	83.60	568	14.18	2958	2512	84.92	384	12.98	9

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
MECKLENBURG (cont'd)											
MC2	4702	3902	82.99	664	14.12	3576	3006	84.06	475	13.28	12
Charlotte Pct. 61 *	4067	3386	83.26	573	14.09	3227	2759	85.50	398	12.33	12
MC1	6429	5344	83.12	905	14.08	4805	4055	84.39	626	13.03	12
CO2 *	10599	8831	83.32	1463	13.80	8896	7481	84.09	1176	13.22	12
Charlotte Pct. 105 *	5093	4146	81.41	672	13.19	3913	3271	83.59	447	11.42	12
Charlotte Pct. 4	4056	3438	84.76	533	13.14	3129	2704	86.42	366	11.70	9
CCK *	2241	1906	85.05	286	12.76	1675	1442	86.09	199	11.88	9
Charlotte Pct. 44 *	2155	1832	85.01	270	12.53	1707	1502	87.99	164	9.61	12
LC1 - South	843	732	86.83	103	12.22	682	591	86.66	86	12.61	12
Charlotte Pct. 79 *	2836	2449	86.35	339	11.95	2188	1931	88.25	228	10.42	9
BER *	2299	2017	87.73	271	11.79	1803	1584	87.85	211	11.70	9
Charlotte Pct. 59 *	2606	2153	82.62	307	11.78	1969	1677	85.17	196	9.95	9
Charlotte Pct. 102 *	3572	3031	84.85	412	11.53	2562	2202	85.95	268	10.46	9
PC2 *	2546	2230	87.59	293	11.51	1936	1706	88.12	214	11.05	9
Charlotte Pct. 50 *	3373	2759	81.80	388	11.50	2747	2304	83.87	272	9.90	9
Charlotte Pct. 38 *	3457	2936	84.93	397	11.48	2974	2576	86.62	299	10.05	9
Charlotte Pct. 33 *	3931	3320	84.46	439	11.17	3234	2767	85.56	335	10.36	9
SC1	5405	4645	85.94	592	10.95	3925	3462	88.20	362	9.22	9
Charlotte Pct. 34 *	3662	3163	86.37	401	10.95	3068	2725	88.82	270	8.80	9
Charlotte Pct. 21 *	3139	2683	85.47	330	10.51	2577	2282	88.55	202	7.84	9
CO1 *	1054	940	89.18	104	9.87	805	720	89.44	77	9.57	9
Charlotte Pct. 94 *	5124	4471	87.26	504	9.84	3655	3231	88.40	330	9.03	9
Charlotte Pct. 51 *	3420	2936	85.85	319	9.33	2894	2554	88.25	223	7.71	9
Charlotte Pct. 58 *	2032	1723	84.79	188	9.25	1515	1334	88.05	93	6.14	9
Charlotte Pct. 83 *	4282	3821	89.23	373	8.71	3298	2969	90.02	260	7.88	9
LC1 - North	4219	3803	90.14	337	7.99	3135	2830	90.27	256	8.17	9

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
MECKLENBURG (cont'd)											
Charlotte Pct. 87 *	4862	4400	90.50	349	7.18	3510	3206	91.34	227	6.47	9
Charlotte Pct. 10 *	2248	2006	89.23	155	6.90	1808	1647	91.10	98	5.42	9
Charlotte Pct. 85 *	3555	3209	90.27	244	6.86	2513	2291	91.17	154	6.13	9
PR1	400	370	92.50	27	6.75	289	265	91.70	23	7.96	9
MA1 *	3784	3520	93.02	201	5.31	2521	2331	92.46	151	5.99	9
MN2 *	5699	5360	94.05	277	4.86	4190	3965	94.63	174	4.15	9
PVL *	6006	5655	94.16	280	4.66	4887	4612	94.37	218	4.46	9
Charlotte Pct. 70 *	3933	3699	94.05	183	4.65	2977	2847	95.63	95	3.19	9
Charlotte Pct. 100 *	4732	4429	93.60	215	4.54	3220	3051	94.75	116	3.60	9
Charlotte Pct. 96 *	3190	2943	92.26	142	4.45	2338	2166	92.64	100	4.28	9
Charlotte Pct. 88 *	3363	3085	91.73	145	4.31	2381	2183	91.68	103	4.33	9
Charlotte Pct. 49 *	2463	2335	94.80	102	4.14	2172	2061	94.89	89	4.10	9
Charlotte Pct. 73 *	4673	4397	94.09	188	4.02	3754	3586	95.52	103	2.74	9
Charlotte Pct. 68 *	5823	5357	92.00	227	3.90	4279	3975	92.90	155	3.62	9
Charlotte Pct. 92 *	5894	5532	93.86	220	3.73	4380	4120	94.06	160	3.65	9
PR3	2865	2688	93.82	103	3.60	2049	1942	94.78	61	2.98	9
SC2	3664	3502	95.58	130	3.55	2881	2762	95.87	98	3.40	9
Charlotte Pct. 93 *	3470	3186	91.82	117	3.37	2507	2332	93.02	66	2.63	9
MA2 *	2563	2453	95.71	79	3.08	1875	1812	96.64	43	2.29	9
OAK	2537	2444	96.33	75	2.96	1984	1915	96.52	58	2.92	9
PC1 *	2417	2319	95.95	70	2.90	1851	1781	96.22	55	2.97	9
Charlotte Pct. 66 *	1899	1808	95.21	53	2.79	1540	1474	95.71	37	2.40	9
LEM *	5597	5383	96.18	152	2.72	4449	4286	96.34	123	2.76	9
PR2	3571	3415	95.63	96	2.69	2359	2249	95.34	70	2.97	9
MA3 *	5550	5301	95.51	147	2.65	4019	3862	96.09	97	2.41	9
Charlotte Pct. 65 *	4574	4294	93.88	121	2.65	3347	3164	94.53	78	2.33	9

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
MECKLENBURG (cont'd)											
Charlotte Pct. 69 *	2439	2321	95.16	62	2.54	1814	1739	95.87	42	2.32	9
MH1 *	6374	6092	95.58	159	2.49	4685	4485	95.73	118	2.52	9
Charlotte Pct. 8 *	2940	2841	96.63	72	2.45	2512	2437	97.01	51	2.03	9
Charlotte Pct. 36 *	3207	3051	95.14	75	2.34	2650	2538	95.77	62	2.34	9
Charlotte Pct. 90 *	5819	5581	95.91	130	2.23	4357	4201	96.42	82	1.88	9
Charlotte Pct. 1 *	1758	1716	97.61	39	2.22	1526	1488	97.51	35	2.29	9
MA4 *	2817	2734	97.05	59	2.09	2008	1952	97.21	37	1.84	9
Charlotte Pct. 37 *	2620	2479	94.62	52	1.98	2134	2035	95.36	32	1.50	9
Charlotte Pct. 91	3982	3841	96.46	79	1.98	2653	2571	96.91	49	1.85	9
Charlotte Pct. 76 *	4379	4199	95.89	86	1.96	3441	3329	96.75	47	1.37	9
Charlotte Pct. 57 *	2286	2224	97.29	44	1.92	1894	1845	97.41	36	1.90	9
Charlotte Pct. 67 *	1879	1828	97.29	36	1.92	1543	1508	97.73	26	1.69	9
Charlotte Pct. 47 *	2039	2000	98.09	31	1.52	1698	1665	98.06	28	1.65	9
XPR1	801	785	98.00	12	1.50	656	643	98.02	10	1.52	9
Charlotte Pct. 71 *	2318	2232	96.29	33	1.42	1753	1697	96.81	24	1.37	9
Charlotte Pct. 72 *	3896	3746	96.15	48	1.23	3027	2925	96.63	39	1.29	9
Charlotte Pct. 74 *	2720	2666	98.01	31	1.14	2231	2187	98.03	26	1.17	9
Charlotte Pct. 86 *	3452	3311	95.92	37	1.07	2444	2357	96.44	23	.94	9
Charlotte Pct. 89 *	3773	3691	97.83	38	1.01	3044	2990	98.23	27	.89	9
Charlotte Pct. 75 *	3356	3247	96.75	33	.98	2692	2618	97.25	24	.89	9
Charlotte Pct. 48 *	2092	2050	97.99	18	.86	1657	1628	98.25	11	.66	9
MH3 *	6148	6047	98.36	50	.81	4442	4363	98.22	40	.90	9
Charlotte Pct. 20 *	2124	2096	98.68	11	.52	1752	1732	98.86	9	.51	9
Charlotte Pct. 32 *	2249	2234	99.33	9	.40	1722	1710	99.30	9	.52	9
Charlotte Pct. 18 *	1851	1843	99.57	4	.22	1435	1430	99.65	3	.21	9
Charlotte Pct. 19 *	1937	1910	98.61	4	.21	1567	1547	98.72	4	.26	9

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
MECKLENBURG (cont'd)											
Charlotte Pct. 77 * (Pt)	1	1	100.00	0	0.00	1	1	100.00	0	0.00	9
XMC2 Noncontiguous	0	0	.	0	.	0	0	.	0	.	12
Sum	511433	364651	71.30	134468	26.29	387981	286959	73.96	92487	23.84	
ROWAN											
West Ward III *	2296	15	.65	2278	99.22	1738	11	.63	1726	99.31	12
Trading Ford Noncont	26	1	3.85	25	96.15	13	1	7.69	12	92.31	6
East Spencer *	2056	317	15.42	1735	84.39	1412	259	18.34	1152	81.59	12
East Ward II *	1089	292	26.81	796	73.09	824	251	30.46	572	69.42	12
Blackwelder Park *	2448	1435	58.62	1001	40.89	1736	1107	63.77	624	35.94	6
South Ward *	3659	2138	58.43	1489	40.69	2745	1787	65.10	937	34.13	12
East Ward I *	2673	1673	62.59	978	36.59	2074	1398	67.41	659	31.77	12
West Ward I *	1964	1222	62.22	702	35.74	1571	1051	66.90	496	31.57	12
North Ward I *	1750	1199	68.51	529	30.23	1473	1065	72.30	393	26.68	12
Faith Noncontiguous	67	38	56.72	20	29.85	55	32	58.18	17	30.91	6
Scotch Irish *	1347	1004	74.54	343	25.46	997	750	75.23	247	24.77	12
Cleveland *	1955	1461	74.73	485	24.81	1449	1097	75.71	348	24.02	12
Spencer *	3546	2704	76.25	815	22.98	2708	2211	81.65	483	17.84	12
Unity *	1756	1381	78.64	358	20.39	1309	1038	79.30	263	20.09	12
Milford Hills *	4680	3771	80.58	835	17.84	3667	3083	84.07	527	14.37	6
Franklin *	4589	3808	82.98	725	15.80	3545	2977	83.98	529	14.92	12
Trading Ford	1845	1543	83.63	290	15.72	1478	1226	82.95	244	16.51	6
West Ward II *	2766	2328	84.16	412	14.90	2192	1894	86.41	282	12.86	6
S. China Grove *	2362	2006	84.93	332	14.06	1791	1565	87.38	208	11.61	6

TABLE 5 cont'd

NORTH CAROLINA HB 586--PLAN A CONGRESSIONAL DISTRICTS OF 1997

Racial Composition of Total Population and Voting Age Population based on 1990 Census Data of Precincts in Split Counties by Congressional District

COUNTY/ PRECINCT NAME	TOTAL POP	WHITE POP	WHTPPCT	BLACK POP	BLKPPCT	TOTAL VAP	WHITE VAP	WHTVPCT	BLACK VAP	BLKVPCT	DIST
ROWAN - cont'd											
Sumner *	4370	3705	84.78	609	13.94	3514	2930	83.38	542	15.42	6
West Innes *	2598	2237	86.10	331	12.74	2255	1952	86.56	281	12.46	12
North Ward II *	1828	1581	86.49	230	12.58	1453	1309	90.09	132	9.08	12
West Landis *	3386	3019	89.16	330	9.75	2680	2404	89.70	252	9.40	6
Mt. Ulla *	1116	1013	90.77	103	9.23	824	755	91.63	69	8.37	6
Hatters Shop *	3584	3222	89.90	318	8.87	2700	2447	90.63	219	8.11	6
Steele *	1236	1134	91.75	102	8.25	909	832	91.53	77	8.47	6
Granite Quarry *	4194	3815	90.96	345	8.23	3102	2805	90.43	270	8.70	6
West Kannapolis *	3183	2891	90.83	220	6.91	2448	2269	92.69	131	5.35	6
Locke *	5763	5373	93.23	309	5.36	4189	3927	93.75	207	4.94	6
East Landis *	1874	1787	95.36	79	4.22	1499	1422	94.86	69	4.60	6
N. China Grove *	2944	2819	95.75	105	3.57	2224	2135	96.00	75	3.37	6
East Kannapolis *	3908	3762	96.26	132	3.38	3146	3049	96.92	89	2.83	6
Faith	2641	2540	96.18	82	3.10	1955	1882	96.27	60	3.07	6
Bostian Crossroads *	5415	5227	96.53	160	2.95	3971	3831	96.47	118	2.97	6
Bradshaw *	3004	2890	96.21	83	2.76	2212	2133	96.43	57	2.58	6
Barnhardt Mill *	1342	1306	97.32	17	1.27	1007	983	97.62	12	1.19	6
Rockwell *	3821	3763	98.48	37	.97	2817	2773	98.44	29	1.03	6
Enochville *	5688	5635	99.07	24	.42	4339	4299	99.08	16	.37	6
Morgan II *	1809	1787	98.78	5	.28	1366	1353	99.05	3	.22	6
Gold Knob *	1706	1701	99.71	4	.23	1210	1205	99.59	4	.33	6
Bostian School *	1511	1505	99.60	0	0.00	1176	1173	99.74	0	0.00	6
Morgan I *	810	803	99.14	0	0.00	636	632	99.37	0	0.00	6
Total	110605	91851	83.04	17773	16.07	84409	71303	84.47	12431	14.73	

TABLE 6
(EXCERPTS)

FORSYTH COUNTY

Precincts included in Congressional District 12 when classified by measures of Democratic strength and African-American Population

% Democratic Registration

% Black Population	50 - 59.9	60 - 69.9	> 70%
< 30%	1/32	0/5	0
30 - 39.9	0/1	½	0/1
40 - 49.9	0	0/1	2/2
50 - 59.9	0	0	2/2
60 - 69.9	0	0	0
> 70%	0	0	13/13

% Support for Harvey Gantt, 1990

% Black Population	50 - 59.9	60 - 69.9	> 70%
< 30%	0/7	0	0/1
30 - 39.9	0/2	1/1	0/1
40 - 49.9	2/2	0	0/1
50 - 59.9	0	0	2/2
60 - 69.9	0	0	0
> 70%	0	0	13/13

% Support for Democratic Lt. Governor Candidate, 1988

% Black Population	50 - 59.9	60 - 69.9	> 70%
< 30%	0/8	0/1	0
30 - 39.9	0/2	1/1	0/1
40 - 49.9	0	2/3	0
50 - 59.9	0	2/2	0
60 - 69.9	0	0	0
> 70%	0	0	13/13

% Support for Democratic Court of Appeals Candidate, 1988

% Black Population	50 - 59.9	60 - 69.9	> 70%
< 30%	0/6	0/1	0
30 - 39.9	0/2	½	0
40 - 49.9	0	2/3	0
50 - 59.9	0	1/1	1/1
60 - 69.9	0	0	0
> 70%	0	0	13/13

TABLE 6 (Ctd.)

SUMMARY FIGURES FOR ALL SIX COUNTIES IN CONGRESSIONAL DISTRICT 12

Precincts included in Congressional District 12 when classified by measures of Democratic strength and African-American Population

% Democratic Registration

% Black Population	50 - 59.9	60 - 69.9	> 70%
< 30%	30/139	18/45	1/1
30 - 39.9	1/2	8/9	4/6
40 - 49.9	0	3/6	5/5
50 - 59.9	0	2/2	8/8
60 - 69.9	0	0	9/9
> 70	0	0	48/48

% Support for Harvey Gantt, 1990

% Black Population	50 - 59.9	60 - 69.9	> 70%
< 30%	13/56	3/12	3/6
30 - 39.9	6/8	5/5	0/1
40 - 49.9	4/4	0/1	4/5
50 - 59.9	1/1	4/4	5/5
60 - 69.9	0	0	9/9
> 70	0	0	48/48

% Support for Democratic Lt. Governor Candidate, 1988

% Black Population	50 - 59.9	60 - 69.9	> 70%
< 30%	18/45	2/12	0
30 - 39.9	7/9	4/5	0/1
40 - 49.9	2/3	4/5	2/2
50 - 59.9	3/3	6/6	1/1
60 - 69.9	0	1/1	8/8
> 70	0	1/1	47/47

% Support for Democratic Court of Appeals Candidate, 1988

% Black Population	50 - 59.9	60 - 69.9	> 70%
< 30%	13/32	2/6	0
30 - 39.9	7/9	3/5	0
40 - 49.9	2/2	6/6	0
50 - 59.9	4/4	3/3	3/3
60 - 69.9	0	1/1	8/8
> 70	0	2/2	46/46

TABLE 7

Participation Rates by Race in Selected North Carolina Congressional Districts of the 1997 and 1998 Plans in Democratic Primary and Runoff Elections of the 1990s (Participation as % of Registration)

Year	CD	Office	White Partic.	Afr. Am. Partic.
1990	1	U.S. Senate (P)	.350	.385
1990	1	U.S. Senate (R)	.212	.276
1992	1	State Aud. (P)	.212	.248
1998	1	U.S. Senate (P)	.219	.198
1998	1	U.S. Cong. (P)	.128	.276
1990	12	U.S. Senate (P)	.133	.255
1990	12	U.S. Senate (R)	.097	.301
1992	12	State Aud. (P)	.098	.176
1998	12	U.S. Senate (P)	.089	.132
1998	12	U.S. Cong. (P)	.025	.065

Note: Participation rates are based on the number of voters votingfor candidates for the office in question and are estimated using weighted bivariate ecological regression analysis. Voter registration figures are used to measure the racial composition of the electorate at each election. Similar estimates were found for eachgroup using extreme case (homogeneous precinct) analysistechniques and are reported in Exhibits C and D.

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TABLE 8

Participation Rates by Race in Selected North Carolina Congressional Districts of the 1997 and 1998 Plans in General Elections of the 1990s
(Participation as % of Registration)

Year	CD	Office	Partic.	Partic.
1990	1	U.S. Senate	.620	.544
1992	1	State Aud.	.584	.493
1996	1	U.S. Senate	.606	.472
1996	1	State Aud.	.563	.423
1998	1	U.S. Senate	.447	.357
1998	1	U.S. Cong.	.405	.383
1990	12	U.S. Senate	.607	.572
1992	12	State Aud.	.653	.625
1996	12	U.S. Senate	.547	.473
1996	12	State Aud.	.503	.453
1998	12	U.S. Senate	.411	.345
1998	12	U.S. Cong.	.408	.346

Note: Participation rates are based on the number of voters votingfor candidates for the office in question and are estimated using weighted bivariate ecological regression analysis. Voter registration figures are used to measure the racial composition of the electorate at each election. Similar estimates were found for eachgroup using extreme case (homogeneous precinct) analysistechniques and are reported in Exhibits C and D.

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TABLE 9

Estimated White Cross-Over Rates in North Carolina Congressional Districts of 1997 Plan A in Statewide General Elections for 1990, 1992, 1996, and 1998
(% of Group Crossing-Over)

Year	CD	Candidate of Choice	Weighted Regression White %	Extreme Case White %
1990	1	Gantt (B)	17.9	23.0
1992	1	Campbell(B)	46.2	49.2
1996	1	Gantt (B)	22.3	25.9
1996	1	Campbell (B)	44.2	47.8
1998	1	Edwards	35.6	37.6
1990	12	Gantt (B)	37.7	32.6
1992	12	Campbell (B)	40.7	39.8
1996	12	Gantt (B)	35.1	32.1
1996	12	Campbell (B)	35.8	35.6
1998	12	Edwards	41.8	40.3

Note: The cross-over rate of white voters is estimated through the use of weighted bivariate ecological regression and extreme case (homogenous) analysis for each of the elections.

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TABLE 10

Estimated White Cross-Over Rates in North Carolina
Congressional Districts of 1998 Plan A in
Congressional General Elections for 1998
(% of Group Crossing-Over)

Year	CD	Candidate of Choice	Weighted Regression White %	Extreme Case White %
1998	1	Clayton (B)	30.4	33.3
1998	12	Watt (B)	32.6	31.0

Note: The cross-over rate of white voters is estimated through the use of weighted bivariate ecological regression and extreme case (homogenous) analysis for each of the elections.

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EXHIBIT 58 FEBRUARY 10, 1997 E-MAIL FROM GERRY COHEN

[from:] Gerry Cohen (Bill Drafting, Director)
[date:] Monday, February 10, 1997 8:40 PM
[to:] Sen. Roy A. Cooper
[copy:] Sen. Leslie Winner
[subject:] 97 Cooper 3.0

By shifting areas in Beaufort, Pitt, Craven, and Jones Counties, I was able to boost the minority percentage in the first district from 48.1% to 49.25%. The district was only plurality white, as the white percentage was 49.67%.

This was all the district could be improved by switching between the 1st and 3rd unless I went into Pasquotank, Perquimans, or Camden. I was able to make the district plurality black by switching precincts between the 1st and 4th in Person/Franklin Counties (Franklin was all in the 1st under COOPER 3.0, but had been in the 4th District in the 80's under Price. By moving four precinct each way, I was able to boost the district to 49.28% white, 49.62% Black. About 0.6% is native American (Haliwa). I could probably improve thins a bit more by switching precincts in Granville and Franklin betwen the 1st and 4th.

I have moved Greensboro Black community into the 12th, and now need to take bout 60,000 out of the 12th. I await your direction on this. I am available Tuesday.

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EXHIBIT 100 INFORMATION SUPPORTING NORTH CAROLINA'S SECTION 5 SUBMISSION FOR ITS 1997 CONGRESSIONAL REDISTRICTING PLAN (EXCERPTS)

The following information is submitted by North Carolina in support of its request to preclear the State's new congressional redistricting plan enacted by the General Assembly on March 31, 1997. The numbered paragraphs correspond to the numbers of the rules of the Department of Justice, 28 C.F.R. §§ 51.27 and 51.28. In most cases, information documenting the information in numbered paragraphs is contained in an attachment bearing a corresponding number. (*e.g.* Paragraph 97C-27A is documented by Attachment 97C-27A).

* * *

¶97C-27H. Authority and Process for Redistricting

The North Carolina General Assembly is authorized by 2 U.S.C. §2a and §2c and Article I, §§2 and 4 of the United States Constitution to redistrict its congressional districts. The prior redistricting plan was enacted by the General Assembly on January 24, 1992, and was precleared under Section 5 of the Voting Rights Act on February 6, 1992. The United States Supreme Court declared District 12 in this plan unconstitutional in *Shaw v. Hunt* on June 13, 1996. On remand, the three-judge panel in the *Shaw* case issued an order on July 30, 1996, permitting the use of the unconstitutional plan for the 1996 elections and giving the General Assembly until April 1, 1997, to draw a new plan. Chapter 11 was

enacted in response to that order. A copy of the court order is attached as Attachment 97C-27P-2.

The process leading to the enactment of Chapter 11 began in the North Carolina House of Representatives in June, 1996. The following is a chronology of events leading up to the enactment of the plan. The designation "AA" after a name indicates that the individual is an African-American. The designation "NA" after a name indicates that the individual is a Native American:

June 13, 1996: United States Supreme Court declares District 12 unconstitutional in *Shaw v. Hunt*.

[*4]June 14, 1996: House Speaker Harold Brubaker appointed a House Select committee on Congressional Redistricting. The committee was chaired by Representative Robert Grady. The other members were as follows: Representatives Carolyn Russell, Lyons Gray, Frances Cummings (AA), George Holmes, Julia Howard, Theresa Esposito, Ed McMahan, Richard Morgan, Mary McAllister (AA), Jim Crawford, and Linwood Mercer. This Committee never met.

July 8, 1996: Senator Marc Basnight, President Pro Tempore of the North Carolina Senate, appointed a Select Committee on Redistricting. The Committee was chaired by Senator Roy Cooper. The following were also appointed as members of the Committee: Senators Charles Albertson, Frank Ballance (AA), Patrick Ballantine, Betsy Cochrane, Richard Conder, Jim

Forrester, Wib Gulley, David Hoyle, Don Kincaid, Bob Martin, Bill Martin (AA), Tony Rand, R.C. Soles, and Leslie Winner.

July 10, 1996: The Senate Select Committee on Redistricting met to discuss the *Shaw* decision and the feasibility of adopting new congressional districts in time for the 1996 general election. The Committee heard from Mr. Gary Bartlett, Executive Director of the North Carolina State Board of Elections, on the requirements for a shortened filing and primary election schedule. Senator Cooper wrote a letter to North Carolina Attorney General Michael Easley outlining the Senate's position and requesting that Attorney General Easley inform the three-judge federal panel that it was impracticable to adopt new congressional districts in time for the 1996 general election. The letter is attached as Attachment 97C-28F-4B(2).

July 17, 1996: The House Committee on Rules, Calendar, and Operations of the House released a redistricting plan (Congress-96-001) to the public. The plan is attached as Attachment 97C-27R-1. The House Committee on Rules, Calendar, and Operations of the House was chaired by Representative Richard Morgan. Its other members were as follows: Representatives Arlene Pulley, Jim Crawford, Jim Black, Joanne Bowie, Jerry Dockham, Theresa Esposito, Ed McMahan, Chuck Neely, and George Robinson. The redistricting plan was submitted by Representative Morgan to the Committee for its review, with instructions that the plan would not be voted on at that meeting. Representative Morgan read a statement to the Committee about the plan that is

attached as Attachment 97C-28F-4A and announced that there would be a public hearing the following week on redistricting.

July 19, 1996: The three judge panel issued an order asking for the opinions of Speaker Brubaker and Senate President Pro Tempore Basnight on the likelihood that the General Assembly would be able to draw a plan in time for the 1996 elections. The House was at the time and remains under the control of Republicans. The Senate was at that time and remains under the control of Democrats. The North Carolina congressional delegation, elected in 1994, was divided as follows: 8 Republicans and 4 Democrats. Senator Cooper, acting on behalf of Senate President Pro Tempore Basnight, submitted an affidavit to the Attorney General that was filed with the Court. Senator Cooper stated in his affidavit that a new plan could not reasonably be enacted for the 1996 elections. Representative Morgan, acting on behalf of House Speaker Harold Brubaker,[*5] submitted an affidavit to the Attorney General that was filed with the Court. Representative Morgan stated in his affidavit that it would be practical to redraw legislative districts in time for the 1996 elections. Senator Cooper's and Representative Morgan's affidavits are attached as Attachments 97C-28F-4B(2) and 97C-28F-4B(1), respectively.

July 24, 1996: The House Committee on Rules, Calendar, and Operations of the House conducted a public hearing in Raleigh on July 24, 1996, to hear the views of interested parties on redistricting generally and on the plan released by the Committee the week before. A copy of the notice of this public hearing, which was published in legal ads throughout the

State, distributed to the media through the media service "Xpedite," and mailed to a list of minority contacts is attached as Attachment 97C-28F-2A. The list of the media organizations contacted by Xpedite is attached as Attachment 97C-28F-4J. The list of minority contacts is attached as Attachment 97C-28H. The transcript of the hearing and sign-in sheets are attached as Attachment 97C-28F-3A. This Attachment includes exhibits submitted by the speakers at the public hearing.

July 30, 1996: The three judge panel issued an order allowing the 1996 elections to proceed under the unconstitutional plan and giving the North Carolina General Assembly until April 1, 1997, to submit a revised congressional redistricting plan to the court for its approval. The order is attached as Attachment 97C-27H-1. The General Assembly adjourned its 1999-96 session on August 3, 1996.

January 29, 1997: The North Carolina General Assembly convened its 1997-98 session on January 29, 1997. Speaker Harold Brubaker appointed a new House Committee on Congressional Redistricting. The Committee was chaired by Representative Ed McMahan. The following were named as members of the Committee: Representatives Dewey Hill, Gene Arnold, Cherie Berry, Dan Blue (AA), Joanne Bowie, Walter Church, Jim Crawford, Arlie Culp, Don Davis, Theresa Esposito, Toby Fitch (AA), Robert Grady, Lyons Gray, Thomas Hardaway (AA), George Holmes, Robert Hunter, Larry Justus, Joe Kiser, Mary McAllister (AA), Richard

Morgan, Warren Oldham (AA), Carolyn Russell, Edgar Starnes, and Ronnie Sutton (NA).

Senator Basnight reauthorized the Senate Select Committee on Redistricting. The same members appointed to the first committee were appointed to this committee (*See* July 8, 1996 entry for the names). Senator Hugh Webster was also added as a member.

February 12, 1997: The House Committee on Congressional Redistricting held its initial meeting, at which time Mr. Edwin M. Speas, Senior Deputy Attorney General, briefed the Committee on the *Shaw* litigation. Mr. Speas and Linwood Jones, Committee Counsel, answered questions of the Committee members. The transcript of this meeting is contained in Attachment 97C-28F-4E(1).

February 20, 1997: The Senate Select Committee on Redistricting met and Senator Cooper presented a congressional redistricting plan (1997 Congressional Plan A) to the Committee. This plan is attached as Attachment 97C-27R-2. Senator Cooper announced that no vote would be[*6] taken on the plan so that the public could comment on the plan at the public hearing scheduled for the following v ek. The transcript of that meeting is attached as Attachment 97C-28F-4D(2).

February 25, 1997: The House Committee on Congressional Redistricting met. Representative McMahan presented a plan to the Committee that had been drawn in response to the Senate

plan. This plan, 1997 House Congressional Plan A.1, is attached as Attachment 97C-27R-3. Representative McMahan announced that no vote would be taken on the plan so that the public could comment on the plan at the public hearing scheduled for the following week. The transcript of that meeting is contained in Attachment 97C-28F-4E(2).

February 26, 1997: The joint public hearing was held in the Legislative Auditorium in Raleigh on February 26, 1997. The transcript of the public hearing and the sign-in sheets are attached as Attachment 97C-28F-3B. Exhibits submitted by the speakers at the public hearing are included as Attachment 97C-28F-3B Ex. *See* July 24, 1996 entry for the distribution of the notice of the hearing.

February 27 - March 18, 1997: Senator Cooper and Representative McMahan met to attempt to resolve the differences between the House version of the plan and the Senate version of the plan and submitted numerous maps to each other during a four-week period of negotiations. During most of the negotiation period, the primary point of contention was how Wake County would be divided between proposed Districts 2 and 4. With one exception, none of these plans containing offers and counter-offers were released to the committees or made public. The exception is 97 House Congressional Plan G, discussed below. However, all of these plans are discussed in 97C-27R and are included in Attachment 97C-27R-12.

Senator Cooper and Representative McMahan were uncertain if they could resolve their differences regarding Wake County before the Court's April 1 deadline. They each called for meetings of their respective committees to take up their own plans. Senator Cooper introduced Senate Bill 433, containing 1997 Congressional Plan A, the same plan Senator Cooper had presented to the Committee weeks earlier. The bill was referred to the Senate Select Committee on Redistricting.

March 19, 1997: The Senate Select Committee on Redistricting met. Senator Cooper presented Senate Bill 433, containing 1997 Congressional Plan A. *See* Attachment 97C-27R-2. Senator Betsy Cochrane presented an amendment that would substitute her plan, "Congress Cochrane," for the plan offered by Senator Cooper. Senator Cochrane's plan is attached as Attachment 97C-27R-11. The Committee approved the plan presented by Senator Cooper. The transcript of this meeting is attached as Attachment 97C-28F-4D(3).

The House Committee on Congressional Redistricting also met on March 19, 1997. Representative McMahan presented a new plan to the Committee: 97 House Congress Plan G. *See* Attachment 97C-27R-4. Plan G was one of the more recent compromise proposals from Representative McMahan to Senator Cooper. Because House rules allow House committees to[*7] introduce bills, the passage of Plan G from committee in effect constituted approval to file a bill for introduction containing Plan G. The transcript of this committee meeting is attached as Attachment 97C-28F-4E(3).

March 24, 1997: Representative McMahan filed the bill containing Plan G on behalf of the Committee. The bill was given a number -- House Bill 586 -- and was referred back to the House Committee on Congressional Redistricting. Afterwards, Senator Cooper and Representative McMahan announced to their committees that negotiations would continue and that they still thought the differences could be resolved before the deadline. Senator Cooper and Representative McMahan agreed on a plan that they would each submit to their respective committees and chambers.

March 25, 1997: The plan agreed to, 97 HOUSE/SENATE PLAN (and its contingent backup plan, 97 HOUSE/SENATE PLAN 0), was presented to the House Congressional Redistricting Committee. Representative Dan Blue offered an alternative plan for the purpose of changing the proposed District 4 back to approximately its current location. The amendment was defeated by the Committee. Representative Ronnie Sutton (Native American) offered an amendment involving Robeson and Cumberland Counties that was also defeated by the Committee because he did not have statistical data showing the effect of his amendment on the population of the districts at that time. The Committee passed 97 HOUSE/SENATE PLAN as a proposed committee substitute for House Bill 586. The transcript of this meeting is attached as Attachment 97C-28F-4E(4).

March 26, 1997: House Bill 586 was reported to the House floor and was calendared for debate. Representative McMahan presented an overview of the plan to the House.

Representative Ronnie Sutton offered an amendment to move a predominantly Native American precinct in Robeson County from District 8 to District 7, where nearly all of the other predominantly Native American precincts were located. Representative McMahan had already announced in earlier remarks that he and Senator Cooper supported the Sutton amendment. The amendment passed by a vote of 117-0. Representative Mickey Michaux of Durham offered three successive amendments. These amendments represented, respectively, plans known as Fitch Michaux Plan A, Fitch/Michaux Plan B, and Fitch/Michaux Plan C. These amendments are discussed in more detail at 97C-27R and they are attached as Attachments 97C-27R-8, -9, and -10.

The committee substitute for House Bill 586 was passed, with the Sutton amendment, by a vote of 87 to 30. Of the 18 members of the House who are minorities, 5 African-American members and 1 Native American member voted for the bill and 12 African-American members voted against it. The bill was sent to the Senate. A transcript of the House floor debate is attached as Attachment 97C-28F-4F(1). (The House does not record its debates. The transcript was prepared from a recording of the entire floor debate by the University of North Carolina Public Television). The relevant portions of the House Journal are included as Attachment 97C-28F-4G(1). The record of the votes is attached as Attachment 97C-28F-4H.

[*8]March 27, 1997: The Senate Select Committee on Redistricting met to discuss House Bill 586 as it came from the House. The Committee voted for the bill. No amendments

were offered during the committee meeting. *See* Attachment 97C-28F-4D(4) for the transcript of this meeting.

The bill was considered on the floor of the Senate the same afternoon. Senator Cochrane presented an amendment containing the same plan that she had presented and that had been defeated in the Senate Committee. (*See* entry above under March 19, 1997). The amendment was defeated on the floor by a vote of 27 to 18. No other amendments were offered to House Bill 586. The bill passed by a vote of 32 to 14. All 7 African-American Senators voted for the bill. A transcript of the Senate floor debate is attached as Attachment 97C-28F-4F. The relevant portions of the Senate Journal are included as Attachment 97C-28F-4G(2). The record of the vote is attached as Attachment 97C-28F-4H.

March 31, 1997: House Bill 586 was ratified as Chapter 11 of the 1997 Session Laws.

April 1, 1997: The Attorney General filed the redistricting plan with the three-judge panel. The Attorney General also filed a motion requesting that the court delay ruling on the plan until the State had received a response from the United States Department of Justice under Section 5 of the Voting Rights Act. The Court was informed in this motion that the State would seek expedited consideration of this preclearance request.

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[*9]¶97C-27M. Reason for Change

North Carolina's twelve congressional districts were redrawn to remedy a redistricting plan containing a district (District 12) that was declared unconstitutional by the United States Supreme Court in *Shaw v. Hunt*.

¶97C-27N. Effect of Change on Minority Voters

The General Assembly's primary goal in redrawing the plan was to remedy the constitutional defects in the former plan. Those defects were the predominance of race in the location and shape of District 12, and perhaps in the location and shape of District 1, and a failure of narrow tailoring. This goal was accomplished by emphasizing the following factors in locating and shaping the new districts: (1) avoidance of the division of counties and precincts; (2) avoidance of long narrow corridors connecting concentrations of minority citizens; (3) geographic compactness; (4) functional compactness (grouping together citizens of like interests and needs); and (5) ease of communication among voters and their representatives. Emphasis on these factors accomplished this goal. For example: (1) the unconstitutional plan divided 44 counties while the new plan divides only 22 counties; (2) the unconstitutional plan divided 6 counties among 3 districts while the new plan does not divide any county among 3 districts; (3) the unconstitutional plan divided 80 precincts while the new plan only divides 2 precincts; (4) the unconstitutional plan used "cross-overs," "double cross-overs" and "points of contiguity" to create contiguous districts while

the new plan uses none of these devices; (5) District 12 in the unconstitutional plan was 191 miles long (in "traveling distance") while District 12 in the new plan is only 102 miles long; and (6) District 1 in the unconstitutional plan was 225 miles long while District 1 in the new plan is only 171 miles long. In addition, the new plan makes new District 12 a highly urban district by joining together citizens in the City of Charlotte and the cities of the Piedmont Triad (Greensboro, Winston-Salem and High Point). Conversely, new District 1 is a distinctively rural district formed from the largely agrarian and economically depressed northeastern counties.

The General Assembly's other primary goal was to preserve the 6-6 partisan balance in the State's current congressional delegation. This balance reflects the existing balance between Democrats and Republicans in the State. The State House of Representatives is presently controlled by Republicans; the State Senate is presently controlled by Democrats; and most statewide elections are decided by narrow margins. It was clear from the beginning that the only plan the Senate and House would be able to agree on was one that preserved the existing 6-6 balance in the congressional delegation. At the same time, the chairmen of the Senate and House redistricting committees felt strongly that the legislature had a constitutional duty to draw a plan for the three-judge panel to review, rather than leave that task to the court. For these reasons, preservation of the existing partisan balance became a driving force in locating and shaping the districts.

These primary goals were accomplished while still providing minority voters a fair opportunity to elect representatives of their choice in at least two districts (Districts 1 and 12).**[*10]** Data and expert studies before the General Assembly provided a strong basis in evidence for the conclusion that the *Gingles* factors are present in the area generally encompassed by new District 1. *See* Attachment 97C-28F-3B and 97C-28F-3B Ex. Based on this evidence, legislative leaders concluded that avoidance of potential liability under Section 2 of the Voting Rights Act probably required the creation of a majority-minority district in that area. Accordingly, 50.27% of the total population within the District is African-American and 46.54% of the voting age population is African-American, based on 1990 census data. In addition, 1997 population projections indicate that the percentage of African-Americans and the percentage of African-American registered to vote are slightly higher in District 1 today than in 1990. *See* Attachment 97C-28A-2. These percentages plus the "cross-over" voters within the District (20 to 25%) provide African-American citizens in District 1 a reasonable opportunity to elect a candidate of their choice. This opportunity is almost certainly enhanced for the life of this plan (the 1998 and 2000 elections) by the incumbency of Eva Clayton. Congresswoman Clayton was elected from old District 1 in 1992, 1994 and 1996 with percentages of 67.0%, 61.0% and 65.9%, respectively, even though African-Americans constituted only 53% of the District's voting age population and 50.5% of the District's registered voters.

The General Assembly did not have sufficient evidence to conclude, and believes that sufficient evidence does not exist to conclude, that *Gingles* factors exist in any other area of the State so as likely to require the creation of a second majority-minority district. In *Shaw* the Supreme Court specifically rejected the State's argument that it had a compelling interest in creating a majority-minority district in the area encompassed by old District 12. Likewise, the General Assembly specifically rejected the creation of a second majority-minority district in the area eastward of Charlotte to Cumberland and Robeson Counties, as proposed for example by Senator Cochrane. Creation of any district in that area would artificially group together citizens with disparate and diverging economic, social and cultural interests and needs. It would sandwich rural voters between urban voters in the State's banking and commercial center at one end of the district and voters residing on and around Fort Bragg and Pope Air Force Base at the other end of the district. Such a district would also rely on uncertain coalitions between African-American and Native-American voters for its "majority-minority" status. Significantly, it would have thwarted the goal of maintaining partisan balance. Under these circumstances, voters could not obtain effective representation, or be effectively represented. Moreover, under these circumstances, race would have become the predominate factor, to the exclusion of the State's redistricting criteria, in the creation of a district which would bear an uncomfortable resemblance to Georgia's District 11 declared unconstitutional in *Miller v. Johnson*.

Nevertheless, District 12 in the State's plan also provides the candidate of choice of African-American citizens a fair opportunity to win election. Though not a majority-minority district, the candidate of choice of the minority community within the District will have a fair and reasonable opportunity to win election based on a combination of minority and non-minority votes. Congressman Mel Watt was elected from old District 12 in 1992, 1994 and 1996 with percentages of 70.4%, 65.8% and 71.5%, respectively. (African-American citizens constituted 53% of the voting age population and 53.5% of the registered voters of old District 12)[*11] Consistent with the General Assembly's primary goal to preserve the existing partisan balance in Congress, new District 12 contains a substantial portion of the core of the urban population of old District 12 and a substantial percentage of voters with an affinity for Democrat candidates, regardless of their race. Those factors, together with the significant African-American population in the District (46.67% total population and 43.36% voting age population) provide a fair opportunity for incumbent Congressman Watt to win election.

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[*12]¶97C-27R. Other Material Concerning the Purpose of the Plan

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[*16]6. Plans Discussed in Negotiations

Senator Cooper and Representative McMahan were involved in negotiations with each other for nearly three weeks in an effort to develop a plan that both the House and the Senate could agree to. These negotiations centered primarily on the division of Wake County between the 2nd and 4th districts.

Several proposed plans were exchanged during this time. The plans constituted a series of offers and counteroffers that gradually moved the Senate and House closer together. This series of changes can best be understood in light of the original plans released by both sides (1997 Congressional Plan A in the Senate and 1997 House Congressional Plan A.1 in the House) and how those plans came about.

In developing the Senate's initial plan as well as subsequent plans, Senator Cooper consulted with members of the congressional delegation and members of the Senate, particularly Senator Frank Ballance, Senator Leslie Winner, Senator Bill Martin, and Senator Marc Basnight. Senator Ballance, an African-American and the Deputy President Pro Tempore of the Senate, was consulted about the placement of counties in the northeastern part of the state -- the area in which

he resides (Warren County) -- including the location of the boundaries of the new 1st district. Senator Winner, counsel for the plaintiffs in the *Gingles* litigation in the early 1980s and a resident of Charlotte, was consulted about the composition of the 12th district, which includes much of Charlotte. Senator Martin, an African-American representing much of Greensboro and Guilford County, was consulted both as to statewide plan issues and the placement of parts of High Point and Greensboro in the 12th district. Senator Basnight, President Pro Tempore of the Senate, was consulted on the plan generally and on the placement of counties in the northeast. Senator Basnight also resides in the northeast (Dare County). Senators Basnight and Ballance together represent most of northeastern North Carolina.

The initial Senate plan was perceived by many Republicans as treating incumbent Republican congressman Walter Jones (3rd District) unfairly (*see*, for example, the comments of Representative McMahan to the House Redistricting Committee on February 25, 1997 at Attachment 97C-28F-4E(2)). The House Republicans felt that the 3rd district was perhaps their most critical district and that the Senate's proposal, especially in the 3rd district, threatened the 6-6 partisan balance. Rep. McMahan responded by releasing a plan (1997 House Congressional Plan A.1) that in many respects resembled the Senate plan. However, Rep. McMahan's plan also addressed the concerns about the 3rd district and created other intentional differences between the two plans to use as "bargaining[*17] chips" in negotiating primarily on three districts -- the 2nd, the 3rd, and the 4th.

Representative McMahan also consulted with numerous individuals, including African-American and other members of the House and Democratic and Republican members of the North Carolina congressional delegation.

Although the boundaries of the 1st District were affected by changes in the 2nd, 3rd, and 4th districts, these changes did not significantly affect the percentage of African-Americans in the 1st District. This percentage fluctuated about two-tenths of one percent as a result of this series of changes. The enacted 1st district is similar to the 1st district that was originally proposed by Senator Cooper after consultation with Senators Ballance and Basnight. As enacted, it includes more of the territory of the existing 1st district than the original House plan, thus keeping more of Congresswoman Clayton's current constituency intact in the district. At the same time, the counties in the coastal/Tidewater region (Chowan, Pasquotank, Perquimans, Currituck, and Tyrrell) are able to remain together with the coastal counties with whom they share economic and other interests.

Differences between the House and Senate plans in the 12th district were resolved quickly. The House agreed to include Winston-Salem in the 12th district in one of its first counter-offers to the Senate, recognizing that it was the only major city in the Triad area not included in the urban-based 12th district.

After the 3rd district and 12th district were resolved, the negotiations focused on the dividing line in Wake County

between the 2nd and 4th districts. The Senate considered that many of the House plans for the 2nd district were not consistent with the goal of keeping a partisan balance and the House felt that the 2nd district in the Senate plans did not reflect the partisan makeup of the prior 2nd district. This issue was the last to be resolved.

MINUTES SENATE COMMITTEE ON CONGRESSIONAL REDISTRICTING FEBRUARY 20,1997

The Senate Committee on Congressional Redistricting met on Thursday, February 20, 1997 at 11:30 a.m. A majority of members were present.

Senator Cooper: The Committee will come to order. If we can get everybody to have a seat. I know you are interested in looking at these plans. We also have plans being passed out for the public. O.K., we are about to begin. I need for you to be quiet in the back, please. Thank you.

Senator Conder: Mr. Chairman

Senator Cooper: Senator Conder

Senator Conder: We have former Representative, Allen Myer and his wife, House of Delegates, from Virginia here. Would you recognize him back in the back?

Senator Cooper: Most certainly. Thank you for coming. Glad to have you here.

Senator Cooper: Members of the Committee, the purpose of this meeting is to present to you a plan for consideration on the redrawing of the Congressional districts for the State of North

Carolina pursuant to Order of the Court. We will not vote on this plan today. I would ask that you take it home, look at it, study it. It will be available for the public, we are going to be online, it will be on the Net and I think the public information people have the web site where you can go look at this plan. We will be having a Public Hearing on Wednesday at 3:30 p.m. to get public input on the plan and on redistricting in general. I don't know at that time whether the House will have a plan [*2]available or not. But then the plan would be to, maybe the end of next week or at the latest the first of next week, to try to get the Senate to act on a plan to get it over in the House and to talk with them. Hopefully convince them that this is a good plan. If they don't think so, certainly talk with them about the situation and go from there. We are operating under a deadline of April 1st, so we definitely need to get moving.

For the elections beginning in 1992, the General Assembly drew the current Congressional districts, which you see, some of the maps around have the current districts which are up there. The General Assembly first sent a plan to the Justice Department with one minority district in the northeast. That plan was rejected by the Justice Department with the instruction that another minority district was needed in the State of North Carolina. The result was the current plan that we have now. This is an overall recap of the current plan. Currently, we have 46 counties which are split, we have six counties which have three members of Congress, an issue that the Supreme Court found particularly problematic. We have several districts with clearly irregular shapes and we have a situation where over a 100 precincts are split. Although lower

federal courts held this plan constitutional, the United States Supreme Court in a 5-4 decision declared specifically the 12th Congressional District to be unconstitutional. There are different interpretations of that decision and other decisions. The bottom line interpretation is that race cannot be the predominate factor in redistricting and that if race is used, districts must be reasonably compact. Of course, the standard of reasonably compact is open to interpretation. Quoting from the Court, the Court wrote that the standard is not the least possible amount of irregularity, but the districts must be reasonably compact and regular.

We had a challenge in trying to draw a plan and we have a challenge ahead of us. In seeking to draw a plan to present to this Committee, Plan A you have there, the following issues were considered. First, geographic fairness, second, reasonable compactness, third, communities of interest, fourth, racial fairness, five, reasonable political fairness, six, precinct boundaries, seven, county boundaries when reasonably [*3]possible, eight, the core geographic area of the current districts and their incumbents, ninth, the potential to achieve consensus within this chamber and within the House chamber and tenth, and probably most importantly, the constitutionality of the plan.

This plan took all of those factors into consideration. As a result, this plan is fair and workable. It will please everyone somewhat and no one completely. This is an overall description of the plan: First, it reduces from 46 to 24 the number of counties which are split into two Congressional

districts. There are 24 counties that are split, bringing it down from 46, cutting the number almost in half. It reduces from 6 to 0 the number of counties which have three members of Congress. As I said earlier, the Court had problems with this. Under the prior plan we had six counties with three members of Congress and now we have none. It uses as a foundation the basic core of the existing Congressional districts. No district is dramatically changed and most of the districts, if not all of the districts have become more compact. I want to go over a brief description - and you have it in your package - but a brief description of the plan as follows: Here is the first district - as you can tell from this plan, the first district went way down into what is currently the 3rd, the 7th and the 2d and intentionally sought out minority population. This district is now much more compact and it contains 50.11% minority overall population. The 2nd district is here, in the green striped, it has the basic core of the current 2nd district. The 3d district is a local district, basically as it was before. You have to have a lot of land mass when you are in the 3rd district to get 552,000 people, but that is out here. The 4th district is pretty much the Research Triangle Park. It covers all of that area with Orange, Durham County wholly in the 4th district and part of Wake County. The 5th district along this part of the state, is relatively unchanged. The 6th district here, there is not a whole lot of change to that in the Guilford County area. The 7th district down here is relatively unchanged. It moves north a little bit and one of the reasons for that is that - the main reason for that is that the 1st district had a lot of area in this - down here at the bottom of the southeast and so you had to come a little bit north to get the population. The 8th district here is relatively

unchanged. I know there a few changes, but when you make changes in one district, you pretty much have[*4] to make changes in all the areas. The 9th district here ... relatively unchanged. The 10th district here, relatively unchanged. The 11th district - much more compact. You can see it is somewhat jagged here. We used county lines to make the 11th district compact. And here the 12th district from Greensboro to Mecklenburg.

Let me talk just a little bit about the 12th district because that was the district which was held to be unconstitutional by the Court. In Congressional Plan A, I believe the 12th district is constitutional as drawn and I will tell you why. First it is much more compact. It is 67% shorter in length than the current district. You can drive it in about 2 hours - from Greensboro to Charlotte.

Senator Winner: An hour and a half

Senator Cooper: An hour and a half - well I was thinking the very southern end of Mecklenburg. Let's go back and look at the *Insider* again and check on Senator Winner. (laughter)

Senator Cooper: It is the third shortest district in the state - the only districts which are shorter in length are the 4th and the 10th. It covers 6 counties instead of the 10 counties that it covered in the past. It connects the metropolitan areas of Charlotte and the metropolitan area of the Triad. It is much wider. One of the main problems the Court had with the 12th district was that it went long stretches with not covering any people at all.....

just go down the highway and not have anybody and just have a thin point of continuity along the Interstate. Here in every place but one, the district is 2 precincts wide, at least and much more - much wider in other areas. Only one area is one precinct wide and that is a very wide precinct. It takes into consideration the incumbent and the overall political balance. It is 47.09% minority, it is not a majority/minority district, but it is a minority influenced district.

[*5]Members of the Committee, I believe that this is a fair plan. You know - there will be questions about the partisan issue. I am no fortune teller. We have some results from 1988 and 1990 races that are in the computer. We are now dealing with 7 years later. It is very difficult to tell. I believe that all 12 of the incumbents would have an excellent opportunity to win each one of these districts. We are not drawing the districts for incumbents. We are trying to draw a plan that will get 26 votes in the Senate and 61 votes in the House. And I believe that we have a plan that all 12 of the incumbents should be able to live with because we have not dramatically altered the geographic nature of their districts.

What I want to do now is open the floor for questions from the Committee and questions, comments - I shared with you previously, most of you on the Committee the Plan and I want to open the floor up for questions or discussion at this time.

Senator Cochrane: Thank you Mr. Chairman and thank you and whatever staff for the efforts that you have presented here. I have admiration for the compactness that I see in several

districts as opposed to some fingers that we saw before and certainly 12 is improved. But I do have a question - when you say that it appears to you that incumbents - your feeling is that the incumbents have a better than average chance at re-election - you think that they are well cared for here. So that brings me to the information sheet - and is maybe more for Gerry than for you - but as I go down registration of Democrats vs. Republicans, and I realize you have to go back to 1990 for these numbers, I presume that they are 1990 registration numbers. Based on the numbers, how can you even consider the possibility it is going to stay 6 to 6? Here are only two that I see where Republican registration is even close to Democrat. The numbers are pretty - there is a preponderance of Democrat registration throughout the district.

Senator Cooper: Party registration has very little relevance at all to election outcome. North Carolina is predominately registered Democratic, but if you look at election[*6] results, it's pretty obvious - particularly in eastern North Carolina - that many registered Democrats vote Republican. That's no indication at all as to political outcomes and once again, I don't want to get into the fortune telling business because, but I don't think that that is a very relevant issue.

Senator Cochrane- I do understand that the demographic, well the registration.....are not the voting pattern. Then what voting patterns would you apply that leads you to be able to say so emphatically that you think the ...

Senator Cooper: I'm not saying that emphatically and this is not - I don't want this to be called an incumbent protection plan because it is not. What we tried to do was to make each district more geographically compact, leaving the core area for each of the present districts. That means each of the incumbents are there in their core area and the districts have not changed radically to the point of affecting the past political outcome. Most of the incumbents that have won, that are there now, won by pretty handy margins.

Senator Cochrane: And you are of the opinion that that is a potential scenario in the next election?

Senator Cooper: Certainly a better than average potential scenario, yes.

Senator Cooper: Senator (William) Martin

Senator William Martin: Mr. Chairman, I would just mention following up on Senator Cochrane's question - just looking at these numbers on the basis - where if you look at the Republican representation on the current plan that does exist, you want to look at that and say that it is highly unlikely that there could be more Republicans elected under the current plan than exists when you look at those numbers. Really, the[*7] numbers are.....on the one that is proposed. I think that supports the idea that the voting patterns - patterns of voting, the trend, would be consistent with this.....

Senator Cooper: Senator Cochrane

Senator Cochrane: Let me respond to that - as for one Representative Jones certainly would not be of the same opinion that you have just offered.

Senator Cooper: Further questions from the Committee?

Senator Conder: Wonderful job Senator Cooper - we applaud you.

Senator Cooper. Senator Ballance

Senator Ballance: Mr. Chairman, I want to make a comment. I think a lot of people worked real, real hard making 1991, 92, whenever we adopted our current plan, and the Justice Department nudged us very much to get two districts where African-Americans, in my opinion, could be elected. I think I recall the results in the Atlanta races of Cynthia McKinney and ..... Bishop, where those districts were.....down to 35 or 40% African-American and they were nominated and elected. But I do have a little concern that in the 1st District, for example, we are coming up now with 44% registration. I think I got that right and because we have talked about this a little bit, but I do not object to this plan because the courts have said that they gotta be compact. At the same time, I don't want people to think that.....ecstatic about it because it will be difficult nonetheless to maintain what I consider the progress we've made in sending to Washington a delegation to represent seven million people that is, for the first time, diverse in terms of race. And I think all of us are proud of that. We may not prefer that particular person who's in that position, but I think

all of us have to be, have to say we are proud of the fact we now have a delegation in Washington, D. C. that is, as Bill Clinton is often saying, it looks more like North Carolina. And I would just hope that[*8] whatever we do with this plan that we will continue to try and look at that issue as something that is important to all of the people of North Carolina.

Senator Cooper: Senator Forrester

Senator Forrester: Thank you Senator Cooper. Was there any particular reason that your committee did not put the 12th District going east from Charlotte rather than going north, etc. and the district going more into the eastern North Carolina- for the 12th, Mel Watts district?

Senator Cooper: Number 1, that is the current incumbent's district. That's very important in being able to get this plan passed the General Assembly. Number 2, you have communities of interest along 1-85. If you go from west to east from Mecklenburg to Robinson County, I think you have a real problem with community of interest.

Senator Cooper: Senator Winner.

Senator Winner: I wasn't going to ask this - but first let me address Senator Forrester's question. From my prospective having spent a lot of time in the downtown, urban Charlotte and a fair amount of time in Union and Anson and Robinson counties, they're really different places with really different kinds of economies and really different kinds of problems and

it never has made sense to me to put them together in a district whereas Charlotte, Winston-Salem and Greensboro are much more similar in their economies and in the kind of problems that they have. But what I wanted to say, and I think it is important from a constitutional basis on this plan, is that it was my opinion that one of the most problematic things about the other plan was the number of precincts that it divided. And, that was really problematic for voters also because it was very hard for the voters in those divided precincts to know which Congressional district they were in. So I think probably the biggest improvement in this plan is that it only divides two precincts instead of dozens of precincts. And the two precincts that are divided - one of [*9]them is in Mecklenburg County and it is divided in practically everything, but there are only four people that live in the part that are divided off. It's just a particular precinct and the other one is in, I think, Washington or Beaufort -

Senator Cooper: Beaufort. It is non-contiguous.

Senator Winner: And it has some water that divides the precinct? The precinct.....

Senator Cooper: Satellite annexation.

Senator Winner: So we only divided off the part of the precinct that wasn't contiguous to the rest of the precinct? And I think that that's very - very important constitutionally, but I also think from the point of view of our constituents and the

voters being able to know where there Congress people are, that that is a very important improvement in this plan.

Senator Cooper: Follow up question for Senator Forrester.

Senator Forrester: Thank you Mr. Chairman. Is it not true when you get the numbers down in the crunch, you are going to have to divide some more precincts?

Senator Cooper: Yes, I was going to add, thank you Senator Forrester, I was going to add a caveat to that. The Supreme Court has held in a case in 1983, and Senator Ballantine and I were just talking about it, we read the case, that you have to get down to no more than one vote variance. That is a ridiculous requirement, particularly when we are working with 1990 census data. But we must do that for the plan to be constitutional. Right now this plan you have before you is just a few hundred off, but necessarily we are going to have to, when we refine the plan and get it ready for introduction, we're probably going to have to end up splitting up about ten or eleven precincts in order to make sure that the numbers come out precisely right - that there is **[*10]** not more difference than one person for each district. That is very frustrating, but that has to be done.

Senator Cooper: Senator (William) Martin.

Senator William Martin: I just want to add, Senator Warren and I were talking about it yesterday that we might also have to

do some legislation placing a moratorium on births and deaths. (laughter)

Senator Cooper: Senator Hoyle.

Senator Hoyle: Thank you Mr. Chairman. Have you had any conversation with your counterparts in the House and, if you have, do you think their plan has - bears any resemblance to ours?

Senator Cooper: I don't understand that they have a plan at this point. I know they ran a plan out last time, or last session in the summer, that does not resemble this plan. But I have talked in generalities with the House chairman, we have not talked specifics, he may be here, Ed may be here, I don't know. Oh, O.K. But it is my understanding that they would be receptive to looking at this plan and I don't think they are gonna have a plan for the public hearing. And I'll let him speak on that. Ed, would you want to say something concerning that?

Representative McMahan: We're glad to see your plan this morning ..... some very positive points on, as part of the plan. I've enjoyed the conversations I've had with Senator Cooper in trying to get this resolved. We do intend to look at this over the weekend and we are in the process of finalizing, maybe not just one plan, but actually looking at a couple of plans and I think this is an excellent start and we will certainly take this plan and factor it in to what we are looking at. And we do intend to present a, our version of the plan, probably in a committee meeting Tuesday afternoon, actually **[*11]** prior to

the hearing. But again, I see some real positive points as part of this plan and we will be able to use it in factoring it into our plan.

Senator Cooper: This is what you call an open meeting. Thank you. All right, further discussion from Committee members? Hearing none, we are adjourned.

/s/Roy A. Cooper, III
Senator Roy A. Cooper, III, Chairman

/s/Susan M. Moore
Susan M. Moore, Comm. Clerk

SECTION 97C-28F-4D(3)

MINUTES SENATE COMMITTEE ON CONGRESSIONAL REDISTRICTING MARCH 19,1997

The Senate Committee on Congressional Redistricting met on Wednesday, March 19,1997 at 4:00 p.m. in Room 1124 of the Legislative Building in Raleigh, N. C. A majority of members were present:

Sen. Cooper: Order please. Members of the Committee, we have before us Senate Bill 433. It is the same plan that was presented to the Committee at our meeting a couple of weeks ago. Let me just briefly go over some of the important points about this plan. I believe that we have strived to come into compliance with the one-person, one-vote rule. We've strived to come into compliance with the Voting Rights Act. We've strived to follow the direction of the Supreme Court to draw more geographically compact districts. We have strived to keep precincts whole. We strived to keep as many counties whole as possible having reduced the number of counties that were split from 46 in the old plan to 24 in this plan. We have strived to maintain partisan balance. We have strived to keep the core geographic areas of the current districts in place so that it will be easier to get a plan past both chambers. We have strived to keep together communities of interest, particularly looking at rural and urban interests. And we have looked at ease of communication between voters and representatives. One important issue is that under the current plan, we have six

counties which are currently represented by three members of Congress. In this plan there are no counties which will have three members of Congress and we believe that we have put forth a plan here which has the potential to achieve consensus. To talk briefly again as I did last time about the 12th Congressional District as it is the reason why we are here, the Court having held it unconstitutional. The current 12th District which we have in Plan A is more compact, much more compact. It is 67% shorter in length, you can drive it in two hours. It is the third shortest district in the state, it covers six counties instead of ten. It**[*2]** connects the metropolitan areas of Charlotte and the Triad, all with communities of interest in the 1-85 corridor. It is much wider. It is not a majority/minority district. I don't believe, certainly we can argue and don't believe that the test for the constitutionality as laid out in *Shaw v. Hunt* would even be considered because it is not majority/minority. And we have taken into consideration the current partisan nature of the 12th District which is Democratic and strived to keep it in that same partisan vein as we have the other six current Democratic districts and the other six Republican districts.

Let me tell you a little bit about the status of the negotiations with the House. This Plan A is the Senate position and the Senate position throughout has been that we need a fair and equal partisan balance. In 1996, the people spoke in an election and decided it was important to have six Republican members of Congress and six Democratic members of Congress. And I don't believe that we should use court-ordered redistricting to redraw that result. The House has come forward with a plan,

and I think they voted on it today, which does not provide for a fair partisan balance. However, we will continue to negotiate, the fact that we are moving forward with this plan today does not cut off negotiations. In fact I believe it has spurred an even greater interest in negotiations and we will continue to negotiate right up to the last minute if necessary. Hopefully reaching some type of compromise before that time. However, until we can reach a negotiated settlement, it is my opinion that we should go forward with a plan that we believe is fair and reasonable realizing that we do have room to negotiate and we will continue that process of negotiation.

At this point, I want to....to recognize Mr. Adam Stein who is here. He wanted to present some information to the Committee which we did not have at the last committee meeting, particularly concerning the Voting Rights Act as it applies to this plan. And so briefly, Mr. Stein, I would like to recognize you and to have you present remarks to the Committee.

[*3]Adam Stein: Thank you Senator Cooper. At the public hearing Anita Hodgkiss of my firm, presented a lot of material which had previously been introduced in the lawsuit which is pending and been to the Supreme Court twice. Material which we contend shows that there is a requirement on the state to adopt a plan that includes a majority/minority district in the....of the northeast portion of the state. Part of that submission was a report by Professor Richard Engstrom who is an expert in the field in analyzing of voting....for voting rights purposes. We have asked.... and he did that at the instance of the state....he was hired by the state in connection

with the litigation. We asked him to update an analysis based on the United States Senate race in 1996 between Senator Helms and Harvey Gantt to see the extent of polarized voting which still exists. He's done that. Anita Hodgkiss, I understand, sent a letter to Senator Cooper and sent copies to all of you which includes Professor Engstrom's report. His report essentially shows exactly the same kind of polarized voting which had existed in 1990, almost to the decimal. So, at this time I would like to present officially the....both the cover letter that Anita Hodgkiss sent to you Senator Cooper, as well as Dr. Engstrom's report. And I have copies if anybody wants them. I think that they were already sent to everybody. I looked at this this morning to make a little chart to see how things looked between 1990 and 1996, and it shows things exactly the same. Professor Engstrom's report also showed polarized voting in 1992 in the 1st Congressional District and the figure that struck me was that in the run-off primary between Mr. Jones and Mrs. Clayton for the Democratic nomination, Mr. Jones got 100% of the white vote and Mrs. Clayton got about 95% of the black vote. We suggest these figures show that there is polarized voting in that part of the state that is severe and requires a remedy. We think that the various plans that have been offered would address that problem and so I would give you this chart to address the Committee.

Senator Cooper: One thing that I want to point out to the Committee, that we have a difficult chore which....which requires a delicate balance here and we are charged with coming into compliance with the Voting Rights Act. At the

same time, we are charged with drawing a plan that is constitutional under *Shaw v. Hunt* which requires us not to[*4] use race as the predominate factor. So, we are....we are caught between two difficult tasks. Amazingly, I think that we've been able to do that with this Plan A and with many of the negotiated proposals that have gone back and forth. If we reach a compromise, I would hope we could come into compliance with the compromise as well. But, I saw some hands. Senator Hoyle.

Senator Hoyle: Just curious how Mr. Stein came up....where he got the facts that Jones got 100% and Eva got 95%.

Senator Cooper: Adam, if you want to come up.

Adam Stein: This is evidence which was introduced in the Shaw against Hunt case by a social scientist who did....they are estimates and he looks at it two ways. And the way I was reporting was with his regression analysis. I think Senator Winner understands it better than I do. He looks at it two ways. One is looking at what he calls homogeneous precincts. These are precincts which are at least 95% minority. He looks at precincts that are at least....that are 10% or less minority and he sees how the vote breaks down that way. He also then does an estimate based on the percentage of....of voter registration by race and the....what the election returns show for that. And exactly what the mathematics are in coming to that estimate, I don't know. Clearly, when I said 100%, that is an estimate. It is obviously less than 100%, but it is overwhelmingly.... Congressman Jones got overwhelmingly high white vote. And

the homogeneous analysis, and he does both, as I recall it showed it about 95%. So it is a very high percentage of the white vote and I'm....

Senator Cooper: Yes

Senator Hoyle: You mentioned again Helms' race and the polarization there among the voters. What percentage black/white did Gantt get and Helms?

[*5]Adam Stein: Again, I'm using his....now using his regression analysis, it's the.... homogeneous analysis is....only a few points difference. The spread is about the same. In 1990, it showed that Gantt received 37% of the....and he expressed in non-black, non-African-American vote, and about 98% of the African-American vote. And that Helms had the reverse of 63% of the non-black vote and about 2% of the black vote. And then six years later when they ran again, that Gantt again ....this time had 36% of the non-black vote and 100% of the black vote. Again, this is an estimate....obviously wasn't perfectly 100%. And Helms had 64% and 0%....a small amount.

Senator Cooper: Senator Winner and then Senator Martin.

Senator Winner: As long as he's reading the numbers....could I ask you to read the numbers for just these northeast counties that are in the proposed 1st District.

Adam Stein: In the northeast counties, in .... for Helms, Gantt in 1996 and I don't have....have this for 1990. It showed that Gantt had 25% of the non-black vote. Statewide he had 36%. The 25% in the fourteen counties and 100% of the black vote and Helms had the reverse - 75% and 0% which shows that there is strong racially polarized voting across the state but it is much stronger in that portion of the state than in the rest of the state. It also showed the....the Engstrom report that the voter.... the participation rate, which is essentially turnout, that the non-black turnout percent was about 60% and the black was about 47%. And those numbers were about the same both in those fourteen counties and across the state.

Senator Cooper: Senator Martin

Senator R. L. Martin: Mr. Chairman, who is the gentleman speaking and is he an authority on redistricting or does he represent a group, or does he represent himself or what?

[*6]Senator Cooper: Please identify yourself.

Adam Stein: My name is Adam Stein, I'm a lawyer. I represent, together with other members of my firm, individuals who intervened in the Hunt against....in Shaw against Hunt case supporting the districting plan that had been in place.

Senator Cooper: Senator Martin.

Senator R. L. Martin: Is he speaking for this plan or against it?

Adam Stein: I am speaking in.....for the plan in saying that as you go through the negotiations that it's our legal position that it is required that there be a majority/minority district in the northeast part of the state.

Senator Cooper: And I would say....thank you Mr. Stein. And I would say that I think that, as I said earlier, we've met both tests with Plan A and that we have a majority/minority district in the 1st but at the same time it is geographically compact and it has a community of interest with rural agrarian northeastern North Carolina, in search of adequate economic development, etc. So I think we have been able to meet both tests.

Now, Senator Cochrane.

Senator Cochrane: At the appropriate time, I would like an alternative....

Senator Cooper: Okay.

Senator Cochrane: .....to offer an alternative to your map....

[*7]Senator Cooper: At this point, I'm going to recognize....I did not go over the specifics of Plan A because we did that at the last meeting and I think you all have maps and everybody is familiar with what it does. So at this time, I will recognize Senator Cochrane who will officially send forth an amendment which is essentially another plan. So ...

Senator Cochrane: There are lots of plans. The Sgt. at Arms will pass those out.

Senator Cooper: All right, Senator Cochrane is recognized to explain her proposed amendment. Senator Cochrane.

Senator Cochrane: Thank you Mr. Chairman and ladies and gentlemen of the Committee. There are some colored maps if you are interested and it is the map to the extreme right that is on the wall here. I beg your pardon, on the far left, unfortunately it is on the far left which is strange for me!

As I was listening to our esteemed Chairman, I was thinking how very similar the generalities could be of the maps that we are offering here today because the criteria that we used had three main points. Primarily we were trying to keep counties whole....

Senator Cooper: Members of the Committee, Senator Cochrane has the floor.

Senator Cochrane: We were trying to have districts that were compact and we were trying to join areas or counties of common interest. And we think from our map that we have accomplished that. Incumbency was not a criteria that we used. I believe the constituents choose the congressman, not that the congressman chooses the constituency. So we did not consider incumbency when we were drawing this map.

By striving to keep the counties in tact, there is the appearance of less gerrymandering and we think that was accomplished in this map. There are only 18 counties that are[*8] divided between two congressional districts and when they are divided, it is only two congressmen who represent the counties. That's for getting the numbers more the same in each of the congressional districts as I'm sure any of the maps end up doing.

We think the appearance of the districts is compact. There are no unusual shapes like the "Zorro" district down in Louisiana that we are all familiar with. We believe that we do show compactness and commonalties in here because of using the criteria that we did. This map, we think, will meet the constitutional requirements because we do not have that 1-85 corridor, the 12th district, that seemed to have given the courts a problem. Obviously, we could give you more detail. Quite frankly I recognize that in one respect I am sort of tilting at windmills here today. But I did think it was important that we offer you an alternative as members of this body and we are a significant number in the body. And we did have a criteria that we used that has directed the implementation of this map. We think it is an attractive map because of its compactness and we do think there are common areas....Senator Winner and I had a discussion of one problem....perhaps, depending on your view of commonalties, but except for that one, I think most of the areas....the counties do have a lot that they do together. In fact, some of the counties where there is a division in order to create the numbers as Bill Gilkeson worked with us, some choices were made in an effort to keep a part of the county where we

would have to split to get numbers, joined with the counties that they already did a lot of things together. For instance, industries or regional activities or common communities that shared schools, fire districts, that kind of thing. I hope you will consider this seriously and look at this. If there are questions, I will certainly try to answer. I will tell you, I am not an expert on map drawing, even after doing this one. It was simply a case of thinking it was appropriate that we have a map to present and so one was drawn, criteria was established that guided and you have the results of that before you today.

Senator Cooper: Thank you Senator Cochrane. As sponsor of the bill that you are attempting to amend with this new plan, let me point out....let me make a statement on[*9] it if I might, Senator Cochrane. I would ask you to oppose this amendment for a couple of reasons. The main one is the constitutionality of the plan. I have a problem, and I would think that our attorneys would have much more of a problem arguing the constitutionality of both the 1st and the 12th districts under this plan. And let me tell you why. First, the 12th District. It, although it does not have the majority/minority African-American, when you add it with Native-Americans from Mecklenburg to Robeson, then you do have just slightly majority/minority. I believe it's a little over 41% African-American and a little over 8% Native-American, so you add those together, you make it majority/minority. That in turn would trigger the test under *Shaw v. Hunt* and I don't think our 12th District...under Plan A has triggered the test. And when you look at the test under *Shaw v. Hunt*, the communities of interest between downtown Charlotte and Robeson County

are worlds apart. I want to point out a case to you. I think that this....this district is similar to Georgia's 11th District which was ruled unconstitutional in the case of *Miller v. Johnson*. And let me describe....the Supreme Court described that district this way. Connecting the black neighborhoods of metropolitan Atlanta and the poor black populous of coastal Chatham County, that's in Georgia. Though 260 miles apart in distance and worlds apart in culture, in short the social, political and economic makeup of the 11th District tells the tale of disparity, not community. I think that is right on point with what you have with the 12th District in Senator Cochrane's plan. In the 12th District in Plan A, you have...if you do trigger the test, which I don't think you do, but if you do trigger the test, you certainly have community of interest with the I-85 corridor and Mecklenburg to the Triad there. Secondly, the Court has talked about incumbency protection as being a....fair game in congressional redistricting. That was done in Plan A. Both Representative McMahan and I stated from the beginning that an even partisan balance, 6 and 6, would be the way to approach this process and it does not do that in Senator Cochrane's plan. Also, I think when you trigger the test, this shape will cause a problem. In the 1st District, I think you have some of the same problems. You do trigger the test because it is majority/minority and when you come into Durham County you then add the urban element to the rural element that we have in Plan A. We're solely a rural 1st district, but when you add the urban element, I think you lose**[*10]** your community of interest and I think you have a danger of unconstitutionality for both the 1st and the 12th districts. Now, can we have further discussion on the amendment. Senator Cochrane.

Senator Cochrane: Thank you, I appreciate that. I will immediately confess not being an attorney. I cannot respond to you perhaps as appropriately as I personally at this moment might like to. But I will tell you that I do question some of the comments you had to make. Some of the areas of commonality are, except for the part of Charlotte, I think that does apply. If you are talking about the 12th District, you are looking at 50.6%, that is true. If you include everybody, it is not anything I have heard about when we have talked in the past about minority representation that you brought in Asians, that you brought in Native-Americans and put that all together. So this is the first time I've heard our compilation of all of those in order to defend or, in this case, attack a minority district. I do think that the voting in the area and the contention that has been made in the past would indicate that this is not a problem. If you are again going to have representation of the people, that will also work out as it probably should. I cannot challenge, nor do I choose to, on the partisan area, keeping 6 and 6. It is not our role to try to protect the incumbents. We did not choose to do that. It is our role to put the people together in districts where they may choose the congressman that they wish to be representative of them. So I do not have an answer about your maintaining the partisanism, and this map will not stand that test.

Senator Cooper: Okay. Discussion. Senator Hoyle.

Senator Hoyle: What is the partisan balance in Senator Cochrane's plan? You just said you didn't know.

Senator Cochrane: He was saying that his was 6 and 6 and that this one would not do that. I told him I could not challenge it...

[*11]Senator Hoyle: What do you think this one is?

Senator Cochrane: I know the ones in the west are, I'm not sure about the toss up.

Senator Cooper: 8 and 4

Senator Cochrane: That's....he's saying because he contends that this one is and I do not.

Senator Hoyle: He'd better know.

Senator Cochrane: Well fine, but he didn't see the maps.

Senator Cooper: Senator Ballance.

Senator Ballance: Question for Senator Cochrane.

Senator Cochrane: Certainly

Senator Ballance: Senator Cochrane, your plan has 79,805 citizens in Durham County and you do not have in your plan Perquimans, Pasquatank, Chowan and Washington counties with a total of 69,248. I did that very quickly, I hope my math is right. But, based on what Senator Cooper just said, are you

not concerned that you are in fact bringing in an urban county and get the same numbers on rural counties?

Senator Cochrane: I'm sure that's possible. I'm not sure that I fully understand all that you are saying. Looking at the map, we have a lot of focus on compactness and areas being together that in some historical, traditional ways had frequently had been together. And so the comment you are bringing up about the urban and rural**[*12]** opposition is not something I am familiar enough within that section of the state to comment on.

Senator Cooper: Senator Ballance.

Senator Ballance: At present, you notice that the current map, the 1st District goes to Elizabeth City which is Pasquatank County, it also has Warren and Catawba and it has Washington in it. Currently those counties would be extremely compact up on the northern end of your district that you have drawn. I do have concern that the plan might not be constitutional. Obviously, I'd like to have a 1st District that....that's a high concentration of minorities to the extent that it could be done constitutionally. But, if you....to go to Durham and pick up 79,000 people, I don't know if that would solve the problem.

Senator Cochrane: One thing, if you will notice, we tried to give some consideration to....in the configuration of some of the districts had to do with the thought of the person in mind who would be representing that....If you look at their travel area, if you look at north, south or east or west, there're some elements like that that come into play that, quite frankly, play

out as well on this map as they do in Congressional A Plan that is there. Those are some facts that should be considered. Again, I can't answer you about the rural against urban in the areas you're talking about. I'm just not that familiar with them.

Senator Cooper: Senator Martin.

Senator William Martin: Mr. Chairman, I would just comment that I think.....in terms of commonality. I would go further to say that if we could draw a plan where race would be a predominant factor, then, yes, there would be a lot of commonality in the 12th District than was drawn. However, since we cannot do that under the Supreme Court ruling, since race cannot be a predominant factor, if we look at the other items,[*13] such as the state of the economy, the type of industry, factors involved in that industry, the predominance and availability of education institutions not in the other. You look at the social and cultural factors, etc. There is clearly not a commonality there and therefore, I believe it clearly would be held unconstitutional and would not.....the Supreme Court.....

Senator Cochrane: Well, tell me how you would defend your 12th District as it is now. How do you defend the parts in Davidson County for instance, being with Greensboro and Durham? You know, these maps are just like anybody else's maps. They're drawn the best anybody can for reasons that they are drawing. That 12th District on Congressional A map is drawn for very specific reasons, many of which you just talked about and the 12th District would challenge the comments you just made.

Senator William Martin: Okay, I would suggest that the.... when you look at the 12th District as drawn under Congressional Map A you do have that strong commonality interest in terms of the economic factors involved. There are always going to be some areas where that would not be the case. But the vast majority of the district itself is focused around particular types of business and industry, focus around the very strong focus on the educational sector and the commonality of other urban concerns that link from Charlotte to Winston-Salem to Greensboro, picks up Surry, picks up..... between....in that revised....the vast majority of the population is in that district. So I don't think we have....subject to challenge.

Senator Cochrane: And I understand what you are saying, but I think it is just as....It is not going to meet it as well when you are talking about those areas in between. They've become just as significantly a concern for someone like me or like the Judges, maybe, as you are saying in the other instance would be.

Senator Cooper: Senator Winner.

[*14]Senator Winner: I feel a need to talk about this 12th District in Senator Cochrane's plan which many people in the Mecklenburg part I represent, I also live in the current 12th District, I guess I'd live in it in the A Plan as well. The.... Senator Cochrane's plan, I think, has a really very difficult urban/rural split in her 12th District. Half of its people, 277,000, live in either Cumberland County or Mecklenburg

County. Now even between Cumberland County and Mecklenburg County, there is a very different kind of representation that's called for. The one being primarily military, the other having banking and very different kinds of interests. In between a very long and, I'll say, a very unpleasant three hour drive in-between, you have Union, Anson, Richmond, Hoke and Robeson counties, which have a whole other third world problems and economy and difficulties and kinds of representation that they need. So, I think that this district would be very difficult, if not impossible, for a single person to represent all the different interests well. The kinds of problems span the range from different economies to the problem of urban health care being very different from the problem of rural health care....the problems of urban housing be very different from the rural housing problems. The very things the federal government does are very different in these areas. The drive, seriously, from Charlotte to Fayetteville is miserable. It would be very difficult to campaign, it would be very difficult to hold district-wide meetings, and again, I think it would be very difficult to represent that district. And finally, I do agree with Senator Cooper that this plan disrupts the partisan parity in a very particular way. This plan completely changes the 8th Congressional District in a way I believe it would make it practically impossible for Congressman Hefner to be re-elected. And while Senator Cochrane was not out protecting incumbents, I can't help but note that Congressman Hefner is our most senior congressman. It is very valuable to the State of North Carolina to have him there. He is the ranking member of the Appropriations Subcommittee on Military Construction, which is very important to our state,

although not to Charlotte, but to parts of the state that he represents. And, while I don't think we should assure his re-election, and I don't think Senator Cooper's plan does assure his re-election, I think it would be a big mistake to make it practically impossible to get re-elected. So, for those reasons I could not support the plan.

[*15]Senator Cooper: Senator Kincaid.

Senator Kincaid: Thank you Mr. Chairman. Members of the Committee, I differ just a little with Senator Winner and.... I'm not sure that Senator Cochrane's proposal before us now would give us 8 to 4, maybe if you had a year like we did two years ago, but a year like we had this past election, I don't think that would be true. Now, Senator Winner, I hate to admit this, but it's going to be hard to match anyone from Mecklenburg in commonality. I'm sure Senator Rand will go along with that.

Senator Rand: I would.

Senator Kincaid: No offense intended, but we don't have any other counties that has the kind of prospective that Mecklenburg has. But, Senator Cochrane mentioned a minute ago and under Plan A, if you look up under the 12th, there's nothing that.... has in common with Mecklenburg, no more than does Robeson. But folks, I'll tell you, I don't know about your counties, but I can recall the last eight or nine years since we've had split counties, and my people in Caldwell County are so split, they don't know who their congressman is. And, consequently means more....and they have no allegiance to their

congressman. You should have an allegiance to your congressman. Senator Cochrane's proposal does the least splitting of any proposal yet. It only splits eighteen counties. I really believe we need to be concerned about the constituent and what's good for the constituent. And, now if I may go a little bit selfish, as a state senator, it's awful difficult for me to represent a county that's split because I have to funnel part of the problems to Congressman Burr, I have to send part of them to Congressman Ballenger and both of those guys are sending all their state problems to me and they are working me to death. So really, whatever plan we adopt, if we try to reach as close to minority that we can as Senator Cochrane has, if we try to be compact and her plan is more compact than any I've seen, and then if we try to solve..... problems, I think it is a good plan.

[*16]Senator Cooper: Senator Rand.

Senator Rand: Thank you Mr. Chairman. I agree with what Senator Winner says. We might be willing to trade NCNB, First Union for Fort Bragg, but I don't believe this will make it work. It is most important to Cumberland County that if we can continue our association with Congressman Hefner that we do so. We are split three ways now, this would split us two ways, between the 7th and the 8th . Congressman Hefner's ranking minority member, as has been said, on the Military..... the Appropriations Committee for Military Construction, which has been extremely important to our community. All of you know, of course, that the base closings have gone on around the world. For southeastern North Carolina, the part where I live, Cumberland, Robeson, Hoke, for that whole area Fort Bragg is

the thing that keeps us economically viable. When you look at the areas outside, when you go to Richmond County, which is not far from us, unemployment is significant. It is not significant in our county because of the military presence and because the buildup at Fort Bragg has gone on while the military worldwide has been shrinking. So we are most concerned about that and the implications for our area. Anybody who doesn't think that the military is important to our area should have been in Fayetteville when Desert Storm.... when the 82nd Airborne went to the desert. The Maytag repairman was lonely down there and it was really tough on business and it was a time that showed our area really what the military presence means to us. And we have been far more fair and far more nicer to our friends in the military since that time. I think the kind of district Plan A has, while not exactly as I would have it, it does show a certain commonality of interesting our area and it allows the 7th and 8th to co-exist together. Congressman McIntyre is on what used to be the Armed Services Committee, I'm not sure what they call it now, but we have a strong military presence in our area and we are now ably represented by two gentlemen who really have the military interest at heart and we are anxious to continue that representation. If your.....I do congratulate you on being a better person than I am**[*17]** and drawing this a 6-6, you know, I think you are to be congratulated for rising above yourself.

Senator Cooper: I have had a couple of out-of-body experiences.

Senator Rand: I figured you had, but obviously, Plan A suits southeastern North Carolina a lot better than that (*pointing to Senator Cochrane's plan*) plan.

Senator Cooper: Senator Gulley.

Senator Gulley: Thanks. Mr. Chair, I wanted to add briefly that one of the things I have learned through this process is that we have to abide by federal law to use 1990 census data as we make these plans and, therefore, when we're looking for a sense of how they will impact us with this number of races, several races that were looked at, whatever plan somebody draws, that they give you those indicators and I hear Senator Cochrane talking about how she hadn't paid any attention to incumbents, and how it affects one party one way or the other. But, then I look at her own data that she handed out.....I look at those races and I see where every Republican incumbent congressman is well protected. And in addition to that, eight of the twelve districts are made Republican districts and that is a significant change from where we are today. And it just lacks creditability to me that we are not paying any attention to the partisan impact of this. I do think we need to all have out-of-body experiences and transcend the effort to be partisan on this and that's the argument I think for Congressional Plan A.

Senator Cooper: All right. Senator Martin and then Senator Soles. I'm going to let Senator Cochrane wrap it up and then we're going to vote on this amendment.

Senator William Martin: Real quickly, I just want to say.... make a couple of comments on the issue of split districts. It was raised today, it was raised at the last[*18] meeting and at the public hearing. I just want to say just for the record....in my area there has not been as much dissension about split districts as one might think. As a matter of fact, in many instances, it can work well because we're represented by Mel Watt and Howard Coble. One of the things that's favorable in that situation is that when they get a call or inquiry, they don't ask where do you live, what street you live in, they.....both of them do that. And the same thing is true with reference to the three of us who represent Guilford County in the Senate. Senator Shaw, Senator Blust and myself, same thing. You..... in the area, any of us will deal with and I think most people see that not as a disadvantage but, if anything, somewhat an advantage in some instances. So I don't think that should be one of the issues that's.....

Senator Cooper: Senator Soles.

Senator Soles: I'd forgotten that the amendment was really what we were talking about and I want to make a motion regarding the bill.

Senator Cooper: All right, I'm....let Senator Cochrane wrap up. I told her I'd let her wrap up and respond on the amendment and then we will vote on the amendment.

Senator Cochrane: Thank you Mr. Chairman. Just one comment that I must make. I can appreciate you all picking

this apart, and that's perfectly all right. In the first place, I am not a map maker. But secondly, how those of you who're involved in drawing the original 1-85, many of you sifting around this table, and now have the second 1-85, can have as much to say as you can about some of the other districts is just a little bit beyond my ability to fathom. But that is neither here nor there. I appreciate that you allowed me the opportunity to come forward and present something. The other thing I would share with you, we were of the assumption in conversations with Bill Gilkeson, before getting these final numbers, there were six that we thought were districts for Republican, possibly seven and so I am sorry, I don't know where the eighth one is. I would be glad to look at it.

Senator Cooper: Senator Conder and then we're going to vote.

[*19]Senator Conder: I just want to rebut what Senator Cochrane just said about the 1-85. If you remember, Senator Cochrane, in the plan we set up there in 1991, only had one minority district and you folks wanted two, so you got two and that's where..... I just want to remind you of that...

Senator Cochrane: Where are the two? I mean you are just saying....

Senator Cooper: All right, all right. Senator Cochrane moves adoption of the amendment. All in favor of the motion, let it be known by saying "aye". All opposed "no". "No's" appear to have it. Did you call division? Okay. Division having been called, all in favor of the motion let it be known by raising you

hand. All opposed, raise your hand. Fails 4-11. All right, now. Plan A is on the floor. Senator Ballance.

Senator Ballance: I just wanted to make a couple of comments on....on Plan A. And I know we've all had enough of this and I think Justice O'Connor and Justice Thomas are wrong. That's got nothing to do with it, I suppose. So we've got to follow that ruling and Senator Cochrane, what I'm concerned about is the plan, Plan A as we have it here, I believe that, according to my research, you could....could split additional counties and come up with a plan that would have a higher percentage of African-Americans in it. But as Senator Martin pointed out, you cannot use race as the predominant factor. And so, while I'm not totally carried away with the 1st District, I think under the law, it's probably as close as you can get - you only split in that district, I think, six counties....five or six counties and maybe twenty-four in the plan as Senator Cooper pointed out versus forty-six. But, here's what concerns me and maybe this has got nothing to do with anything. But until '92, it's been almost a hundred years since George White was in Congress after the last African-American was elected. His home is still there in New Bern, preserved and we could have a situation, I hope and pray we**[*20]** don't, where because of this ruling, which I said I don't like, we might have no African-Americans representing this state. That's sort of a scary feeling and I know those of us sitting around this table wouldn't want that to happen. And I don't know why it is that the Supreme Court said that the plan was ugly, we couldn't use it because I've seen some plans dating back to the turn of the century where the lines went all kinds of ways. And so we're trying to comply

and the plan that has been drawn here, presented as Plan A, tries to comply with the law and a lot of us are going to go silently because we think it fits within the law. That's the only reason as far as I'm concerned.

Senator Cooper: Senator Winner.

Senator Winner: In contrast to the 12th District in the Cochrane Plan, I do think that the 12th District can, in Senator Cooper's plan, make a lot of sense. In fact, there is an urban/Piedmont presence that gets very well represented in this plan. It gets to have a voice. Of the 550,000 people in that 12th District, over 70% of them live in Mecklenburg, Forsyth and Guilford counties. And they do have a real commonality of urban interests with inner city schools, urban health care,..... problems, public housing problems and it is a part of the state that deserves to be represented and is well represented in this plan. It is also a very functional district. You can drive from one end to the other of it in an hour and a half without speeding. It would be easy to have district-wide meetings, to campaign, to get.....for any constituent to get to....if you have a congressional office in Greensboro and one in Charlotte, any constituent could get to one of those offices within an hour, it would be very functional, it would be in two media markets, not spread all over the place. It would be easy to have communication. I will say from Mecklenburg County, it has been very good for us to have bi-partisan representation. There have been many instances in which Congresswoman Myrick and Congressman Watt working together with the Republicans in Congress and the Democrats in the administration. They

have been able to do a very good job of representing us but yet it is good to continue to do that. And I would think that that will be as true as well for Forsyth and Guilford as they will be well-served by having two congress people, **[*21]** probably of different parties. In addition, this plan only divides one precinct in the 12th Congressional District and that one little piece is taken off in Mecklenburg County only has one house in it and it is divided every.....in the county commission plan, in the city council plan, in the school board plan, it's just an odd shaped precinct. So that little house is used to being separate. And, it's a house that is in an industrial....part that is otherwise industrial. It....it divides no counties into three districts. The former 12th District divided almost all of these counties into three districts and it only has six counties in it. It can really function as a district. And I would say, since I'm very happy having Mel Watt as my congressman, I also view it as a plus given the voting behavior of the people of our congressional district that our current congressmen have a fair chance of getting re-elected. And I think that.....

Senator Cooper: Senator Hoyle.

Senator Hoyle: Mr. Chairman, I've been redistricted to death. I'd like to move for favorable report.

Senator Cooper: Senator Hoyle has moved for a favorable report for Senate Bill 433. Further discussion. Hearing none, all in favor of the motion let it be known by saying "aye". All opposed "no". The "ayes" appear to have it, the "ayes" do have

it. The bill is given a favorable report. Thank you members of the Committee.

The meeting was adjourned at 5:10 p.m.

/s/Roy A Cooper, III
Senator Roy A. Cooper, III, Chairman

/s/Susan M. Moore
Susan M. Moore, Committee Clerk

ATTACHMENT # 3
March 11, 1997

Senator Roy Cooper
Chair, Senate Congressional Redistricting Committee
North Carolina General Assembly
16 West Jones Street
Raleigh, North Carolina

RE: Congressional Redistricting

Dear Senator Cooper:

As you may recall, this firm represents defendant-intervenors in the *Shaw v. Hunt* litigation. Included in the materials we submitted at the Joint Congressional Redistricing public hearing on February 26, 1997, was analysis of racially polarized voting by Professor Richard Engstrom. Professor Engstrom's report was based on various elections he analyzed prior to the trial in the *Shaw v. Hunt* case in 1994. We asked Professor Engstrom to update his study by looking at the most recent Gantt versus Helms election. In particular, we asked him to look at the level of racially polarized voting statewide as well as the level of racially polarized voting in the northeastern region of the state, which we defined as the eighteen counties that are included in the proposed First Congressional District in the Senate plan, 1997 Congressional Plan A.

There are two important findings in Professor Engstrom's updated analysis. First, he found that there is greater polarized voting in the northeast than in the state generally. Second, he found that turnout for African-American voters is significantly lower than turnout among non-African-American voters. Both of these findings support the propositions that there is a strong basis in fact for concluding that the legislature's failure to create a majority black district in the northeastern region of the state would violate Section 2 of the Voting Rights Act.

I am enclosing for your consideration a copy of Professor Engstrom's report of his findings. Please feel free to give me call if you have any questions. Thank you very much for your work on this very important issue.

Sincerely yours,

/s/Anita S. Hodgkiss

ASH:rer
cc: Members, Senate Redistricting Committee

ATTACHMENT # 4
February 7, 1997

Ms. Anita S. Hodgkiss
Ferguson, Stein, Wallace, Adkins, Gresham, and Sumter
Suite 300
741 Kenilworth Ave.
Charlotte, NC 28204

Dear Ms. Hodgkiss:

I have performed, at your request, an analysis of the vote for Mr. Harvey B. Gantt in the November 1996 general election for a United States Senate seat in North Carolina. This work supplements the analysis of North Carolina elections that I performed previously for the State of North Carolina in the *Shaw v. Hunt* litigation. The methodologies employed in the analysis of this election, regression and homogeneous precinct analyses, are identical to those employed in my previous reports for the state. The voter registration data utilized to analyze this election are for October 11, 1996, and therefore reflect the registered electorate at the time of this election.

The homogeneous precinct analysis concerns the votes case in the precincts in which over 90% of the registered voters was African American and in which less than 10% was African American. Mr. Gantt received 97.9% of the votes cast in the homogeneous African American precincts across the state, but only 38.1% in the homogeneous non-African American precincts. The voter participation rate in this election in the homogeneous African American precincts, expressed as a

percent of the registered voters, was 49.6%, while the participation rate within the non-African American precincts was 59.0%

The estimated support for Mr. Gantt among the African American voters in this election produced by the regression analysis, which is based on the votes cast in all of the precincts in the state, is 100%. His support among the non-African American voters is estimated by regression to have been 35.7%. The correlation coefficient for the relationship between the racial composition of the precincts and the vote for Gantt is statistically significant .777. The regression estimate of the participation rate in this election among state's African American registered voters is 46.8%, while that for non-African Americans is 58.9%.

You also requested the results of these analyses for the northeast region of the state, an area that you informed me is comprised of the following 18 counties; Beaufort, Bertie, Craven, Edgecomb, Gates, Granville, Greene, Halifax, Hertford, Lenoir, Martin, Northhampton, Pitt, Vance, Warren, Washington, Wayne, and Wilson. The vote in this area is more racially divided than in the state as a whole. Mr. Gantt received 96.6% of the votes cast in homogeneous African American precincts in this region, but only 29.0% of those cast in the homogeneous non-African American precincts. Voter participation in these African American precincts, again expressed as a percentage of registered voters, was 50.2%, compared to 61.9% in the non-African American precincts.

The regression analysis of the votes cast in all of the precincts in these 18 counties places Mr. Gantt's support among the African American voters at 100% and his support

among the non-African American voters at 24.9%. The correlation coefficient for the relationship between the racial composition of the precincts and the vote for Gantt is .930, higher than that for the state as a whole. This is also a statistically significant correlation. The regression estimates of the voter participation rates in the northeast region are 47.0% for African Americans and 61.6% for non-African Americans.

I hope you find this information useful. If you require any additional analysis, please let me know.

Sincerely,

/s/Richard L. Engstrom
Research Professor of
Political Science

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SECTION 97C-28F-4E(1) (EXCERPTS)

MINUTES

HOUSE COMMITTEE ON
CONGRESSIONAL REDISTRICTING
FEBRUARY 12, 1997
3:00 P.M.

W. Edwin McMahan, Chairman

[*18] **Chairman McMahan:** If you don't mind, prerogative of the chair, let me make a couple of closing comments. First off, I would like to say that we know this is probably one of, if not the, most partisan issues that we will talk about this session. It always is, and there is no reason for it to be any different this time. I really do hope that all of us working on this Committee and working with the Senate can recognize that we do have [*19] an April 1st deadline, and that we do try to put forth our best effort to approach this in a non-partisan way to really come up with a plan that has the best change to be approved by the court, and at the same time be acceptable by both sides. I've heard a lot of Members say that they really believe that there is an advantage for the Democrats if, in fact, we don't reach an agreement and it goes to the court and the three judge Panel decides. That's been said, but I don't really believe that the Senate leadership, and I certainly don't believe the incumbents that are holding these offices in these twelve districts are in favor of us not trying to do our job, and do it to the best of our ability and try to reach an agreement. I don't think any of us

want to let the court decide this issue. We really want it to be the very last resort. I want you to know that I have been assured by the leadership of the Committee on the other side that they do have an attitude that they want to cooperate and all of us try to get on board and agree upon a plan that both sides can live with, and again, hopefully, it's not going to be their plan and our plan and they are far apart, which again if they are done in a completely partisan way, they are going to be far apart. I hope we can approach it in a way that we know we don't have a lot of time and try to do our job, but do it well. I'd like to just make three or four points about the plan itself.

First off, it's a plan that will only be for four years -- so it's not like it's a plan that's going to be for the next ten years -- it's only a plan for four years. I want to also point out to you that everyone needs to keep in mind that currently we have a balance in the State Congressional seats, six Republicans and six Democrats, so I think it's extremely important that we focus on the idea that we want to continue to maintain balance. It's very important as far as the new plan is concerned. We also have to keep in mind that I think the plan that has the best chance to be approved will be the plan that protects the current incumbents. So, it is more of an incumbency plan, and some of you may not like to hear this, but I think the plan that protects the existing incumbents and does the least in the way of changing the overall plan has the best chance of being approved and everybody getting on board -- again, in this short time frame. We know that we have got to redraw the 12th District. There's no question. We certainly believe [*20]also have to redraw the 1st District, even though it has not been ruled unconstitutional -- everyone tells us, and we

certainly have been given the opinion that it probably needs to be looked at. They didn't actually say it was unconstitutional, but they sort of just said the first one is and leave it at that. If you look at this map up here, it's pretty obvious that number 12 is unconstitutional, but if you look at number 1, to me it is probably just as bad. I do hope that we can keep in mind that we want to draw a plan that certainly, of course, will consider race, and it will certainly be a consideration, but we will not base it on race. At the same time, we have got to keep in mind that we have got to be geographically compact. That is certainly a condition that we have been told -- in my opinion from what I've read about it -- as well as race -- so both things have to be considered. I think also, of course, we want to try to divide as few counties and precincts as we possibly can, and as to how much flexibility we have on population -- I know we're hearing all kinds of answers. I don't know what that is, but at the same time, Georgia has drawn a plan that now takes into consideration trying not to divide counties, and we ought to make that effort to try to divide as few counties and as few precincts as we possibly can, and then again as I mentioned earlier, I think we have got to think in terms of generating a plan that protects the incumbents as best we can and maintains the balance that now exists, and hopefully, with that in mind, and all of us on board to try to work together. Again I know I am a newcomer to this process, and I might be too optimistic that we're going to get everybody on board, but I don't really have a choice at this point in time and I don't think we do. The only way we're going to do this job and do it right is for everybody to get together and look at it as if we're balanced today -- let's do the job we need to do and walk away with a

plan that is still balanced. I have been assured by the other side that is the way it is being approached, and their plan next week will be a plan that we will not just turn our backs on. We'll have to wait and see, and I hope the Committee again will keep a optimistic attitude until we do that, and at the same time I have asked Staff to, of course, try to determine the criteria as best we can and asked Linwood to go ahead and pull some of these plans. We've got some plans. There have been a lot of them drawn over the past year, and there are some that we probably [*21] already know about that will come out of the other side and I'm pretty optimistic. I hope all of you will be, and all of us can keep that kind off attitude and get on board and get this job done. I wanted to close with that, but hopefully we'll continue on and answer any other questions.

SECTION 97C-28F-4E(2)

MINUTES

HOUSE COMMITTEE ON
CONGRESSIONAL REDISTRICTING
FEBRUARY 25,1997
1:00 P.M.

Chairman McMahan: Good afternoon. I'm Ed McMahan - I'd like to welcome all of you - Committee Members in particular and all the members of the Press and guests to our Congressional Redistricting Committee Meeting this afternoon. I am very pleased to present this afternoon the House version of the Congressional Redistricting Plan. Even though it's probably impossible to draw a plan that everyone finds completely acceptable, I sincerely believe that the plan we are presenting here this afternoon is very close to being a perfect plan -- a plan that recognizes racial fairness but does have geographic compactness to the districts, while maintaining the balance that exists in our Congressional Delegation.

The leadership of the House has said from the very first day of this session that we are very interested in doing this job, which we are actually responsible to do in a fair and non-partisan way.

We all recognize the problem we have with the Justice Department telling us to have minority/majority districts while the Supreme Court has ruled that the manner in which we drew these district lines used race as the predominate factor, and that was not an acceptable practice. Add the incumbency issue to

that, and what is needed to get a consensus on both sides, and you can see that we have a very tough assignment, but I have tried to stress from the beginning that we on the house side are interested in fairness and that means maintaining at least the current balance we have in our Congressional Delegation.

As I said last Thursday, the Senate Plan was an excellent start. You will see many similarities between the two plans -- in fact, many of the districts are either identical or so similar it may be scary to many of you that have been here a while. One of our major concessions has been to not try and force drawing district 12 from Charlotte along 74 to Robeson County. The Senate said early on that this was unacceptable, and we have certainly respected their wishes.

The highlights of our plan are as follows:

1. We split 19 counties - I think we can go to 18 counties - in lieu of the 24 on the Senate Plan and 45 on the current plan.

2. We make District 12 more compact than the Senate Plan. We fear that the Senate Plan may not be as compact as it needs to be for the Court, so we have taken a more direct route to Greensboro from Charlotte.

When you do make it more compact, we do reduce the minorities in this district, but I am 100% confident that a minority can certainly win in a district that exceeds 40%.

We cross Cabarrus County and Davidson in lieu of Iredell and Davidson, and we do not enter Forsyth County with the 12th District.

3. Districts 8, 9, 10, 11 are very close on both plans.

   A. Based on the 90 registration data, we have actually strengthened these slightly for the incumbents.

4. Next District 7 - the McIntyre District is actually a little stronger Democrats because of the minority added from Congresswoman Clayton's District before.

5. District 6 is almost identical between the two plans - we originally had Moore County in District 2, but we have moved it back to be similar to the Senate Plan. We have moved it to District 6.

6. District 5 is similar except we have to make it more compact by moving all of Forsyth and Yadkin into District 5 -- and not dividing Wilkes -- and moving Caswell into District 6.

7. District 2 and 4 which divide Wake County on the Senate Plan - our plan does also divide Wake County, but we felt we needed to

maintain more balance in these two Districts. We moved some Republican voters from District 4 (Cary and the Northwest quadrant of Raleigh) into District 2, but left the area inside the Beltway in District 4 -- along with Orange, Durham and Person County.

8. We feel that the Senate Plan treated District 3 - the Walter Jones District – very unfairly, and we moved the majority of Wayne County back into this District and did not split Beaufort County as the Senate Plan does.

We also gave District 3 a portion of New Hanover County but followed the Senate Plan and did not include Sampson County. As it is now, it will move to District 7 along with Duplin County.

9. Finally, District 1 is now drawn to be far more geographically compact than the Senate and is similar to the actual Senate Plan, except we do include Pasquotank, Camden and Tyrrell County in District 1, and we do not divide Washington County like the Senate Plan.

Our District 1 has a minority/majority of 50.26% versus the Senate Plan of 50.11%.

I also want you to know that I am going to recommend to Senator Cooper that we consider renumbering the Districts. There just has to be a better way to number the Districts than they currently are from the Coast going West. I'm not sure whether we can do that or not, but I think it's something we ought to consider.

So, to close, I hope all of you see a lot of positives in this plan. Please remember we are developing a plan for only the next four years. I sincerely believe that this plan does have geographic compactness, but it also recognizes the need for racial and political fairness that must be present in order for us to get the support of both chambers.

I certainly would welcome any questions or comments by Committee Members at this time.

Representative McAllister: Do you have the percentages in this plan for District 7.

Chairman McMahan: Yes Ma'am

Linwood Jones: Are you looking for the total population or registration.

Representative McAllister: What are these based on - population - total population or what.

Linwood Jones: We have reports on different categories - we have it on total population- we have it on voting age. It's in your package - the second part of that package.

Chairman McMahan: Representative McAllister, as far as number 7 - I would give you the data that I have. We're showing the current plan has about 70.6% Democrats -- if you're asking the difference between Democrats and

Republicans. The Senate version increases that to about 72%- the House Plan actually increases it to 75% -- so actually District 7 becomes stronger under our Plan than it does under the Senate version.

Representative Sutton: I have some concerns about Robeson County. Under the Senate Plan there was less division of Robeson County, and under the House Plan it's split almost equal, and to me that's critical because that's the center of the Native American population in Southeastern North Carolina -- and what they are doing in the House Plan is -- for total population you split about 6% in one district and 3% or so in the other. That is certainly diluting the 9 or 9 ½ % Indian vote down in that area. It just appears to me that this was done -- for whatever reason -- with no regard for the Native American population down in that part of the county.

Chairman McMahan: Thank you, so the Senate version is much more palatable.

Representative Sutton: The Senate version is much more palatable to the people in my district than the House version. We have some minor concerns with the Senate version but we have a lot of heartburn with the House version.

Chairman McMahan: Thank you Sir.

Representative Fitch: District 1, District 6 and District 12 - going to be 1,000 off the ideal population - you plan on working on that or do you plan on leaving it as is.

Chairman McMahan: Yes Sir, the final Plan will have to continue to look at the population. As of right now we are - as I mentioned - we're only dividing 19 counties - we're actually only dividing 2 precincts. As we try to get this closer -- you know the question is will we need to go down to one

vote - one person districts - but to answer your question Representative Fitch, we do need to still do some minor adjustments with the Senate to get this probably less than 1,000 - whether it needs to go to one - we'll have to decide that. I personally am more inclined to think that maybe we can use a 200-250 number if it turns out to be necessary to keep from dividing precincts - but of course that would be something the Committee will have to decide and we'll decide with the Senate.

Representative Morgan: Thank you Mr. Chairman. It appears likely that the House will not accept the Senate Plan, and these bills, or one of these bills will go to Conference - and isn't that the time we'll have to finalize agreements to get it as close as we can, so each District will have the proper number.

Chairman McMahan: Yes Sir, I do believe that what I hope we can do is to get feedback from the Committee Members today, and we'll, actually spend the next few days sitting down with the leadership of the Senate Committee and look at the differences between the Plans and see if we can come to a Plan that we can all agree upon that we'll bring back to you and they will go back to the Senate - of course at that time if we can find a common ground, and we feel we can introduce a Plan to both Committees, and maybe run one bill in both Chambers - that will be the time we will make the adjustments for the size of the Districts. If we see that we cannot reach an agreement, or run one bill - Representative Morgan, I think the way you described it would be the way it would work. We'll do it in the actual Conference Committee after we each do our own bill.

Representative Hill: Thank you Mr. Chairman, I agree with Representative Sutton - I hope we can do something about Robeson County because we're dividing the District all to pieces there. I like the 7th Congressional District, and I like keeping Hanover in District 3 - I don't think we need that in District 7 - if we can work out the numbers, I think he's got a good point.

Chairman McMahan: Thank you, we'll certainly look at that.

Representative Russell: Yes, I wanted to ask as we go into the process of deciding between the two Plans if we have concerns - for example - Wayne County is still split - Lenoir County is still split - do we put that request in writing to you or how do we communicate that.

Chairman McMahan: Certainly you need to communicate it to me, and I think depending on the number that have remarks - I think that would be an excellent idea -- so if you would -- all Committee Members -- any thoughts or comments after you have had a chance to look at it later today-- if you would jot those down and give those to me - then we'll take those and use those as we meet with the Senate.

Representative Sutton: Mr. Chairman, can you give us some feel for the time frame that you are going to be operating under for this - try to get an acceptable bill to both Houses prior to deciding that you are going to go with a particular bill - whatever it is - can you give me some time frame for that so we'll know how expeditiously we need to work and what have you.

Chairman McMahan: Representative Sutton, I spoke with Senator Cooper yesterday. He agreed not to introduce his

bill until he had a chance to review our Plan following the presentation today. I think we'll get together during the next couple or three days and we'll see if we're going be able to put the two together - if not, then I would envision next week -- we'll have a Public Hearing tomorrow and get the feedback from the Public - factor all that in -- if we're not able to get together again next week - then try to come up with a House version to be introduced as a House bill - with them doing their bill. I envision that being done in the next week.

Representative Justus: Hearing no positive remarks, Mr. Chairman, it must be a good Plan, because everybody must be dissatisfied.

Chairman McMahan: Thank you very much. Any other questions or comments. If not, this meeting is adjourned.

The meeting was adjourned at 1:25 P.M.

/s/W. Edwin McMahan
W. Edwin McMahan, Chairman

/s/Sharon Cram
Sharon Cram, Committee Clerk

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SECTION 97C-28F-4E(3) (EXCERPTS)

MINUTES

HOUSE COMMITTEE ON
CONGRESSIONAL REDISTRICTING
MARCH 19, 1997
3:15 PM

W. Edwin McMahan, Chairman

[*1] Chairman McMahan: Good afternoon. I'm Ed McMahan and I'd like to welcome the Committee Members here today. I'd like to welcome the guests who are here with us. Our Pages for today are Kristen Howell from Ash County and Cynthia Ferrell from Johnston County. Welcome, we are glad you are with us this week.

Before we get started and entertain questions about what is being passed out to you, I would like to open by making a few general comments to you. Some of us have been working very, very hard since our first Committee Meeting on February 12th to negotiate a Plan that would be acceptable to both bodies while still being racially fair, geographically compact, incumbency friendly, and divide as few counties as possible. **[*2]** During this period of time, of course, I have asked most of you to give me back any comments or feedback that you had, and we have tried to look at Plans and take your comments back and discuss them and try to incorporate them into the Plan -- again keeping in mind though that we needed to develop a Plan that could be approved by both bodies. I want to thank each and every one of you for the time you have

put into it and the feedback you've given us. We also, of course, held a Public Hearing to hear from the citizens of North Carolina -- other legislators who are not actually serving on this Committee -- and we've tried to respond to their comments as best we can. We appear to be very, very close to agreeing on a Plan that at least the Chairpersons of the two Committees believe would be acceptable to both sides, but quite honestly I must tell you that we are not quite there. I have decided today to have the Committee Meeting and to bring to you one version of our Plan, and the one that I hope you will approve and recommend to the other House Members. The leadership of the House has asked me to work for a Plan that both sides could agree on and that is exactly what we have tried to do, but with the April 1st deadline only seven legislative days away, both Senator Cooper and I believe that we need to proceed to approve a Plan in each Chamber and then let us continue to negotiate. Our goal was to come to an agreement before introducing a bill, but with the deadline pending, I think we need to move ahead.

The Plan being shown to you today is what we call Plan G, and it's the one that we actually presented back to the Senate -- or I did -- last Friday. We felt then, and we still do today, that this should be a Plan that's acceptable to both sides. We have decided not to go back to an earlier version of our Plan as the Senate may do today when they meet at 4:00 P.M., because I personally believe that that really means moving backwards, and I certainly hope that this is not the case. I must say that I was somewhat disappointed yesterday when the Senate responded to the Plan you'll see today and the response did seem to move somewhat backward. I want to still say that

we are very, very close and, in fact, the reason I was late coming over here was that Senator Cooper was talking to me, and we're continuing to talk, and again, I think we're very close to having a Plan that at least the Chairpersons agree upon. The Plan you see does maintain racial fairness in [*3] District 1 and 12. We've actually agreed to increase the percent of minorities in District 12 to 46% and are now basically following the Senate Plan on District 1 and 12. We recognize the division that occurred in Robeson County, as far as the Indian population was concerned in the earlier plan, and we've corrected that problem. Also, we've moved to compromise District 3 to move New Hanover County back to District 7, and moved several Northeastern North Carolina Counties into District 3 as the Senate requested. In District 2 and 4, our Plan is intended to be a reasonable compromise. The Plan strengthens the number in District 4 for the Democrats, but it maintains in District 2 the balance that occurs under the current Plan. The current Plan and the Plan you're looking at basically has approximately -- as best we can tell -- a 70/30 registration in favor of the Democrats over the Republicans and, as best we can tell, it maintains about a 53/47 margin that Congressman Etheridge had during the last November election. So again, as far as District 4 is concerned, it is definitely with Durham County being added to that district -- it's probably shifted towards the Democratic side. District 2 -- we've tried under this Plan, and Staff has been instructed to really sort of maintain what the current Plan shows. We believe that this approach is a fair approach and should be the basis for our agreement and, of course, I would again very much appreciate

the Committee Members support of this Plan and would ask for any comments or questions that you might have at this time.

Representative Blue: Mr. Chairman, I noticed that in reading the cover sheet that you are basing it on election data from the '90 and '88 elections. Is there any particular reason the election data wasn't updated to reflected current trends.

Chairman McMahan: Representative Blue, we have actually gone and gotten this current data as best we can. What I described was based on the fall of last year's election results. The printed data, of course, has been what's been part of the package from the very beginning, and what's been handed out doesn't reflect the current figures because they are basically estimates. Staff has gone back and tried to go -- because the Districts are not the same, and obviously they overlap, and they actually involve several Congressional Candidates -- not just the Candidates presently holding office in 2 and 4 -- **[*4]** so the figures that Senator Cooper and I are looking at actually are based on current registration as best we can determine '96 and also based on '96 election results. I don't know whether you'd like Staff to comment on that. If you feel it appropriate, I would be very happy to ask them to.

Representative Blue: No - my question I guess - and you've answered it - you're saying that these maps now are based on '96 election results and Congressional races as well as the election data from the '90 Senate election, '88 Lieutenant Governor's election, and the '88 Court of Appeals election.

Chairman McMahan: Sort of a combination, Speaker Blue, of all of it. We've analyzed it from every angle and both sides have tried to come up with what could be the best set of data we can get. It is being analyzed not only on the old data

– what it is on is current data – particularly as it relates to District 4 and District 2, Speaker Blue, because those are the two that we feel like are the ones we are having to have the most discussion on. The rest of the Districts are – both sides I believe feel like we've balanced and left basically as they are.

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SECTION 97C-28F-4E(4) (EXCERPTS)

MINUTES

HOUSE COMMITTEE ON
CONGRESSIONAL REDISTRICTING
MARCH 25, 1997
3:25 P.M.

W. Edwin McMahan, Chairman

[*2] [Chairman McMahan]: . . .I believe our Plan does a much better job than the Current Plan in providing geographic compactness, homogeneous compatibility, and divides less than half the Counties than the current Plan does. At the same time, it recognizes racial fairness and is friendly to our incumbents, which we both determined on the front end to be an important consideration in this process.

Now I hope that you the Members of the Committee will recognize this Plan as certainly not a perfect Plan, but a Plan that has been negotiated in good faith between both sides and will be found acceptable to you this afternoon. At this time I would like to call on Senator Cooper to say a few words.

Senator Cooper: Thank you Mr. Chairman. I appreciate the opportunity to appear before your Committee. We are currently on the Senate floor debating the Excellent Schools Act so I need to get back as quickly as possible, but I would like to say that we as a Legislature were given the responsibility by the Courts before April 1st deadline to redraw these Districts. I think this agreement is a large step towards fulfilling that responsibility. It would be very easy to turn this

matter over to the Courts and avoid that responsibility. I think it's also very easy to vote against the Plan because each one of us can find a problem with it. Those of you who dealt with Redistricting before realize that you cannot solve each problem that you encounter and everyone can find a problem with this Plan. However, I think that overall it provides for a fair, geographic, racial and partisan balance throughout the State of North Carolina. I think in order to come to an agreement all sides had to give a little bit, but I think we've reached an agreement that we can live with. I think it is much better than rolling the dice with the Federal Courts, and I hope that you will give it your due consideration. I also want to publicly thank Representative McMahan for working with me. It's a very contentious issue and we have **[*3]** dealt with each other on an up front and honest basis from [t]he beginning, and I appreciate the opportunity of working with you on this Representative McMahan.

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[*3] Linwood Jones: The Plan we reported out last week was labeled Plan G. This is, of course, labeled '97 House Senate Plan. I'm doing this visually -- so I'm just going to give you some of the major differences, but in District 5, Ash and Yadkin have flipped between 5 and 10. In Iredell we have gone into Statesville, which I believe picked up the minority percentage of District 12 -- we came a little bit more out of Southern Rowan **[*4]** when we did that. District 7 and 8 down in the Cumberland, Robeson area is different -- we pick up a few more precincts along the western edge of Robeson County

-- Ft. Bragg goes into District 7, which is now represented by Congressman McIntyre. Sampson County is a little different in our Plan we passed last week -- we took a few more Northwestern Precincts from Sampson County into District 2 -- you can see we have retreated a little bit from that in this Plan. Wake County is different -- the major differences in Wake County are that a little more of Northwest Raleigh goes into District 4. Inside the Beltline, a little more of that comes into District 2 than what we had put in Plan G last week. Those are the major changes. There are a couple of small changes in Jones and Craven Counties, but for the most part District 3 and District 1 are essentially the same as last week.

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HOUSE CONGRESSIONAL
REDISTRICTING COMMITTEE
DISCUSSION HOUSE FLOOR 3-26-97

[*1] Speaker Brubaker: For what purpose does the Gentleman from Moore arise.

Representative Morgan: Mr. Speaker, House Bill 586 - short title - Congressional Redistricting 2 is placed on today's calendar.

Speaker Brubaker: Clerk will read.

Clerk: House Congressional Redistricting Committee - House Committee Substitute for House Bill 586 - A bill to be entitled **AN ACT TO DIVIDE NORTH CAROLINA INTO TWELVE CONGRESSIONAL DISTRICTS.**

Speaker Brubaker: The Chair recognizes the Gentleman from Mecklenburg to explain the bill.

Representative McMahan: Mr. Speaker - Members of the House – Eight weeks ago today I was appointed by Speaker Brubaker to chair the Congressional Redistricting Committee. At the time, I really didn't know what I was getting into, but today I must wonder what I did to the Speaker to deserve this punishment.

Seriously, I first want to thank the 25 Members of our Committee for their input and support. The Committee Substitute before you has received a favorable report from our Committee and does include the Plan agreed upon by the Senate Congressional Committee. So this Plan has been negotiated between both sides for the past eight weeks. It is not

a perfect Plan, but we have tried very hard to agree upon a Plan that is based on geographic compactness, racial fairness, population that is homogeneously compatible, incumbency friendly, and would divide the fewest number of counties and precincts as possible. The Current Plan divides 45 Counties and 80 precincts - new Plan divides 22 Counties and only 2 Precincts.

I want to point out to each member that this job has been made doubly hard because we received an ultimatum in 1992 to have a second Majority /Minority District, but last year our 12th District, as you know, was ruled unconstitutional. So the point I **[*2]** want to make is that we have tried to agree on a Plan that will be approved by the Justice Department and also be found constitutional.

As I said earlier, we don't have a perfect Plan, but I want you to compare it closely to our Current Plan that I have placed on your desk.

Starting in the West, please look at District 9, 10, 11 and see that we no longer divide Buncumbe, Henderson, Polk, McDowell, and Rutherford County.

The current Plan also has parts of District 5 extending into Burke, Caldwell and Wilkes County - our new Plan no longer splits those counties.

We also have now Cleveland and Gaston together in District 9 and not divided as in the Current Plan.

As you look at 12, we no longer extend from Gastonia to Durham - now only extends from Charlotte to Greensboro. We believe this District will now stand a Court test for the following reasons:

1. Not a Majority/ Minority District now so shape does not create that - that was the basis the Court used to say this was unconstitutional - not an argument now.

2. Population in 12 has homogeneous interest - comprised of many citizens living in an urban setting.

3. Drawn to protect the Democratic incumbent.

All three factors are recognized as legitimate factors for drawing Congressional District Plans.

Not a great deal of change has occurred in District 8 except now we don't divide Moore County.

District 6 is also very similar - except it includes Moore County.

[*3] Moving East, a great deal of change and certainly improvement has occurred due to realigning District 1 - old map has District 1 really scattered over the entire Eastern North Carolina. Now we have a considerably more compact District 1 that still has over 50% of a minority population.

With the changes in District 1, we are now able to keep Columbus, Brunswick, New Hanover, Pender, Duplin and Onslow Counties together, and all in District 7 except Onslow, which is in District 3.

District 3 also more compact because it does not now come from the coast all the way into Sampson and Duplin County.

Now to the Triangle where we have caused the most controversy. If you look at the Current Map, you see how District 2 wraps around Wake County on the north and takes

part of Durham County - now that District 12 from Charlotte no longer extends into Durham County, it certainly makes more sense to put Durham back together and combine it with Orange County and Chatham County -- counties already in District 4– than to either put it entirely in District 2 or extend District 1 down from N/E to pick up Durham County. When we pick up Durham County, it obviously causes us to divide Wake County, and the logical division in my opinion is to include the Research Triangle and Western Wake County in with Durham and Chapel Hill, and Eastern Wake County moves into District 2. This also makes more sense to me than the original Senate Plan that divides Wake on a more East/West line with North Wake County going into District 4 – and South Wake County, including Cary, moving into District 2. This seems to make sense not only for geographic compactness but also the makeup of the population certainly appears more homogeneous with the Triangle and 3 major Universities together. I regret that this has not made some of my good friends from Wake County happy, but I would like to point out that the other major counties, Guilford, Forsyth, and Mecklenburg, are all divided and represented by 2 Congressman and that is not all bad. Major metropolitan areas have a lot of needs unique to their area and having 2 Congressman working together for your county can be very positive.

[*4] So, to close, I ask each of you to look at what we have done as to a total Plan for our State - again, taking into consideration the directives we have from both the Justice Department, the Court, the incumbency issue and all the other factors. Please keep in mind all the many other factors we have had pulling on us in doing this job. Those of us involved have

done our dead level best to agree on a Plan that both sides of the aisle in each Chamber can support. Our alternative after next Tuesday will be to turn this matter over to the three judge panel to do our jobs. I am hopeful that we can forget the partisanship we may have on this issue and let's do this job that the Constitution directs us to do and not have to ask the Court to help us. I really don't think any of us want to send that kind of message to the citizens across North Carolina.

Please note that the bill also provides a back up plan that goes to 0% population variance if the Court should rule the Plan unconstitutional because of the very small variance we have between Districts. It will then divide 12 precincts in lieu of 2 to meet this requirement. Again, this is only in the event we need to go to 0% population, which most of us do not believe we will need to do.

Mr. Speaker, Representative Sutton will offer an Amendment that makes a slight change in Robeson County that has been agreed to by all parties. It had been agreed to earlier, but somehow got changed in the final Plan approved in Committee yesterday, and I apologize for that.

I understand that other Amendments will be offered and even though I want each Member offering an Amendment to know that I respect their reason for doing it, I must ask my fellow Members to please keep the Plan in tact. If one change is made, other than Representative Sutton, we will begin to unravel weeks of intense negotiations and agreements that have happened in small steps along the way. Please understand that I can appreciate the reason for the Amendments being offered, but I must ask both sides to please defeat them to protect the

integrity of the overall Plan so that we can get it approved in both bodies.

Thank you.

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[*10] Representative Daughtry: Thank you Mr. Speaker. I hope this body will vote against this Amendment. No one has worked harder in a more difficult job than Representative McMahan has done in trying to work out with the Senate -- and there are two bodies by the way -- us and them -- and they would have liked very much to have drawn Districts that would have 7 Democrats and 5 Republicans. Likewise, we would like to have 7 Republicans and 5 Democrats, but we have 6 and 6 and our agreement is that we talked to the incumbents about these Plans. At the same time, try to make them more compact, have communities together as best we can with commonalties of interest. **[*11]** This Plan has not been approved by the Senate. This Amendment would simply set us back and ultimately require Federal Judges to reapportion our State at a time when we don't need that to occur. I urge you to vote against this Amendment. Vote for the Plan that has been worked on for eight weeks -- is a very delicate balance. I realize that many of you find it distasteful to see the way the Districts have been drawn, but under the circumstances -- the way the makeup of these bodies are -- it is the best that Representative McMahan and Senator Cooper could do based on these circumstances. Please vote against the Amendment. Thank you.

Speaker Brubaker: Further discussion -- further debate. If not, the question before the House is the Amendment sent forward from the Gentleman from Durham. Those in favor will vote aye -- opposed no -- the Clerk will open the vote. The Clerk will lock the machine and record the vote -- 30 in the affirmative -- 87 in the negative -- the Amendment fails. For what purpose does the Gentleman from Durham arise.

Representative Michaux: I have an Amendment to send forward.

Speaker Brubaker: The Gentleman may send forward his Amendment. The Clerk will read the Amendment.

Clerk: Representative Michaux moves to amend the bill on page 2, line 22 through page 17, line 10.

Speaker Brubaker: The Chair recognizes the Gentleman from Durham to explain the Amendment.

Representative Michaux: Mr. Speaker and Ladies and Gentlemen of the House, this is almost the same Amendment as before except some of the percentages have been changed. Let me tell you what is wrong with the Plan that has been brought out here. They talk about the 12th District being held constitutional because it is not now a Majority/Minority District. The Court has said in its ruling that race cannot be a predominate factor -- other factors have to be taken into consideration, and that would be a community of interest, and even the shape that Justice Sandra Day O'Connor called attention to in here opinion. All you have done with the 12th District in this bill is knock **[*12]** sixty miles off of it. That's basically all that is done, because if you look at the configuration of the 12th District on the map that the Committee sent forth, you will see that it is basically the same

configuration with sixty miles lopped off of it. The Amendment takes the 12th District – broadens it to a degree and yet keeps an Influence District there where the Representative -- the incumbent Representative -- is in a good position to win that District. There are two other Districts, so I would urge you to adopt this Amendment.

* * *

[*16] Representative Wainwright: Thank you Representative McMahan. In your opinion -- in this present Plan that is being presented today - do you feel that you have - the Committee has - truly set out any Minority Districts in this Plan - a true realistic Minority District.

Representative McMahan: We certainly feel that District 1 - where it has been based on the old data - and I think the current data would even be more - we have more than 50% of the population as minorities in District 1. I certainly do believe that would qualify as a Majority/Minority District. As far as District 12 -- I believe, again, that Congressman Mel Watt is very comfortable and anyone else that might choose as a minority to run in that District should feel very, very comfortable -- when there is 46.5% of the people in that District are also minorities -- that they could win. So, I think we've done our very, very best considering the Justice Department's ruling, the Court's ruling - we've done our very best to try to create two Districts that certainly do have racial fairness, and of course you have to keep in mind Representative Wainwright that we were instructed by the Court not to depend

solely on race. It can only be a factor -- along with other factors -- and that's what we've tried to do.

Representative Wainwright: Follow up Mr. Speaker.

Speaker Brubaker: Does the Gentleman yield - the Gentleman yields.

Representative Wainwright: Certainly I want to commend you for your efforts and the efforts of the Committee in putting forth this Plan Representative McMahan. If you remove the element of incumbency out of this Plan, do you really think that a minority would have a fair chance of being elected especially in the District that I was in, and that takes me out of the District now and puts me in a different District in this Plan. Do you believe that a minority will have a fair chance of being elected if you remove the incumbency element out of it.

Representative McMahan: Absolutely without any question.

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[*23] [Representative McMahan] . . . I am confident that we have done our best – our dead level best – to draw two Districts that are fair racially and do have one of them the majority of the population and the other one over 46%, and that's the very best we could do on both sides, and we looked at this very, very closely – obviously – and the very best we could do and yet create Districts that we felt would be acceptable to the Department of Justice and to the Courts.

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SECTION 97C-28F-4F(2) (EXCERPTS)

FLOOR DEBATE ON CONGRESSIONAL REDISTRICTING SENATE CHAMBER THURSDAY, MARCH 27, 1997

[*3] **Reading Clerk**: **H.B. 586**, A BILL TO BE ENTITLED AN ACT TO DIVIDE NORTH CAROLINA INTO TWELVE CONGRESSIONAL DISTRICTS, reported favorably.

President: Senator Cooper is recognized to explain the bill.

Senator Cooper: Thank you, Mr. President, members of the Senate. Today we have a congressional redistricting plan that splits forty-six (46) counties, that has six (6) counties which have three members of Congress, and which splits over eight [*sic*] (80) precincts. The plan we have today has some social merit. As a result of this plan, for the first time in many, many years, we have two minority members of Congress as a result of the current plan. However, we have a plan that is a geographic mess. I have, for your viewing pleasure if you want to call it that, had placed on your desks a copy of the current map so that you can see how difficult it is for people to know in which Congressional district they reside. Last year, the United States Supreme Court ordered the Legislature to redraw the map as a result of the 12th Congressional District being declared unconstitutional. Now there are arguments for and against this decision. In fact, the Court found it close. It was a 5-4 decision and one of those Justices sort of wavered back and forth - Justice O'Connor. But the result was that the 12th District was held unconstitutional by a 5-4 decision and we were ordered by April 1 to come up with a new map. When

this process began, we had a House controlled by the Republican Party and a Senate controlled by the [*4] Democratic Party and people were saying that it couldn't be done, that we could not reach an agreement. In fact, other states which had been ordered by the Court to redraw their plans under similar circumstances, other states have been unable to agree on a plan. I want to commend all of those who have been involved in this process because we have agreed on a plan - a plan that is fair and workable. You have the plan on your desk, it is entitled "97 House/Senate Plan A." This plan reduces the number of counties that are split from forty-five (45) [*sic*] to twenty-two (22). There are now only 22 counties split under this plan. It reduces the number of precincts split from over eighty (80) to two (2) and those two precincts have special circumstances with satellite annexations, etc. and are split under most other plans as well. You have a plan which provides for geographic compactness, provides for consideration of community of interest, and provides for fair partisan balance. I think that all of the congressional districts would be competitive. However, it is likely that, if political fortunes remain the same, that we would end up with a plan that would elect six Democrats and six Republicans. We said from the beginning in the Senate that in 1996 the people made a decision to elect six members of Congress from the Democratic Party and six members of Congress from the Republican Party and we should not use court-ordered redistricting to alter that result. Therefore, we've come up with the plan that you see before you. In considering the plan, we looked at community of interest, looking at keeping precincts whole, at keeping counties whole as much as possible. We looked at making sure

that no counties had more than two members of Congress representing the county. We looked at racial fairness. Let me tell you a little bit about the 1st and the 12th Districts because the unconstitutionality of the 12th District is the reason why we are here. You have the statistics on your desk, but the 1st District is majority minority, total population 50.27%. [*5] However, let me emphasize that race was not the predominate factor in drawing the 1st Congressional District. We have a district that has ten whole counties and ten split counties. It's a district which respects the rural agrarian nature of the northeast. It is a district which, I believe, that a minority member of Congress or even a minority challenger would have an excellent chance to be re-elected, but I believe the 1st District not only is constitutional, but also complies with the Voting Rights Act which is also a responsibility we have with this plan to have it pre-cleared by the Justice Department and held constitutional by the Courts. The 12th District is almost 47% majority minority. Currently, the 12th District under our current plan is majority minority. I believe that this new 12th District is constitutional for several reasons. First, and maybe most importantly, when the Court struck down the 12th District it was because the 12th District was majority minority and it said that you cannot use race as the predominate factor in drawing the districts. Well guess what! The 12th District, under this plan, is not majority minority. Therefore, it is my opinion and the opinion of many lawyers that the test outlined in Shaw vs. Hunt will not even be triggered because it is not a majority minority district and you won't even look at the shape of the district in considering whether it is constitutional. That makes an eminent amount of sense because what is the cut-off point for when you

have the trigger of when a district looks ugly. I think that the court will not even use the shape test, if you will, on the 12th District because it is not majority minority. It is strong minority influence, and I believe that a minority would have an excellent chance of being elected under the 12th District. If, however, the court decides that the test is triggered for some reason and that we should look at the criteria outlined in Shaw vs. Hunt, you need to look at what the, how we have improved the shape of the 12th District. First, it is much more compact. It is 67% shorter in length **[*6]** than under the old plan and you see how the old plan stretches from Gastonia to Durham. You can drive the length of this district in two hours. It is the third shortest district in the entire State. It covers six (6) counties instead of ten (10), it connects the metropolitan area of Charlotte and the metropolitan area of the Triad. There is certainly a community of interest along that corridor, economic, social, and otherwise. It is much wider and it takes into consideration the incumbent and political balance. For all of those reasons, I believe that the 12th District will be held constitutional. Members of the Senate, redistricting is a difficult process - I don't want this job again, but I believe that we have been able to overcome partisan politics and we have been able to reach a plan that is fair to the people of North Carolina, and fair to all involved. The House agrees. Yesterday, the House voted unanimously in favor of this plan - 87-30. Of those 87 members who voted "yes", 52 were Republicans and 35 were Democrats. That is a good strong bipartisan show of support for this plan. I believe that this plan is acceptable to all of the members of Congress. There are a couple who have stated objections about the way that some area

had been moved around, but as far as the partisan nature of the districts is concerned, we have preserved the current partisan nature of each of the districts and for that reason, I think that all of the incumbents are satisfied. And let me emphasize to you that this is not an incumbent protection plan. This is a plan that attempts to preserve the partisan nature of each of the twelve districts as they now exist. I believe that we've done that with this plan. Members of the Senate, I encourage you to vote for this plan. We have a responsibility as a legislature to draw a plan. It's easier politically to say "let the courts do it", but that's rolling the dice. Number one, you don't know what you are going to get and, number two, it is shirking our responsibility as representatives of the people to do what the Court has **[*7]** ordered us to do. We may not like everything about the plan, there are some parts of the plan that I wish I could change, but the process of negotiations require give and take. That's what has happened here. I think we have a result that is fair and equitable for all of the people of North Carolina and I encourage your "yes" vote. Thank you.

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[*21] **Senator Blust**: Let me first start out by saying that this is, this plan is and improvement over what we have now, no doubt about it. Senator Cooper has put in a lot of work on this. I admire his stamina sometimes, all the tasks he's been given, he seems to perform very well in meeting with . . . . of them, but I think I am falling into a familiar role here, I guess I am starting to find any role on the team. I think more and more I am becoming the little boy who in the story, "The Emperor's

New Clothes", had to get up and say when no else dared to tell the Emperor that he was not wearing anything because he had been snuckered(?) by some con men tailors, a little kid not knowing what he was doing said in public one day that the Emperor didn't have any clothes. At that point, once it was said everybody was free to realize that, but my problem with this plan is **[*22]** fundamental and I just don't think - in anything you come out with a good result unless you have good fundamentals. Everybody now is excited about the Final Four and the Tarheels have been practicing all week, but most of their practice time, even at this level of competition, is drilling the fundamentals and drilling the fundamentals, because if you forget them everything else crashes down and the major weakness with this plan, quite frankly, and I think everybody here knows this is the truth whether they will get up and admit it or not it's not going to make a difference, is the fundamental predicate was on protecting the current twelve. And that was the only way to really get a deal between the parties on this and get support for it and there were just two factors that went into developing this plan - one was protecting incumbents, the other was race. We might as well face that. Part of the problem is that the Courts have put, I think, ridiculous constraints on this process. Some of the problem lies in the fellows in the black robes, but we come to this Body and I think we sometimes lose our way, we forget the big picture, forget what it's all about and I just want to quote from the Constitution of this State that sets up this Body and sets up our government and its says this in Article 1, Section 2 called "Sovereignty of the People - All political power is vested in and derived from the people; all government of right originates from the people, is founded

upon their will only, and is instituted solely for the good of the whole" and I think concocting a plan based mainly on protecting twelve out of seven million (7,000,000) citizens means that the plan can't be a good one. Logic teaches that if the premise of something is wrong, all the predicates that follow from that flawed premise aren't really logical and here we have a premise that's wrong and I think we forget this fundamental point about our government being for the people and the people having power, because what happens is politicians win an election **[*23]** and suddenly they seem to think they become entitled to their seats for as long as they want to have them. That's what we have, we have it at every level, we have it here in our district system, we have it in Congress, if once you are elected you search, there's a science behind this, I hear people arguing over I want this precinct, I want that precinct, solely designed to make it easier for them to retain their seat and we argued in here the other day on a bill about tenure. I think what we have in our redistricting is a form of political tenure and two of these seats, in 1994 the public voted one way and in 1996 another. So now in 1997 that we've got an opportunity because of a court decision to redo the districts, we are gonna do it to solidify what happened in "[*sic*] 96 so that in '98 maybe a difference public can't see it differently. You know, sometimes I talk to people and talk about government and try to keep it on the basics and I have found that you can hold up a map of our districts and you don't even have to say any more when you are trying to make the point that government has gone astray somewhat, people look at these things and they can see it without any need for anything more and we have been talking about districts here. Someone

said that one of the districts is too long, look at District 5, here. It goes along the Virginia border forever. No one tried to correct that and I just don't see any rational plan to make districts concise to where they serve the people in the community and I'll just give one example. There's actually a precinct in Mecklenburg that is split between everybody else in the precinct and one person, one house, and I'm told, wait a second, it's not one house, there is some industrial area around it and that had to be split in order to keep one of these districts contiguous. That is the kind of . . . . we go through here and someone, Senator Hoyle, mentioned that 51 House Republicans voted for this as if that is some kind of . . . . between House Republicans and Senate Republicans. Well, I don't know how to explain that, I don't think when **[*24]** we are pointing the fingers over district there's a, any party can say anything about the other and have totally clean hands, but I do fear that some of my brethren in the House may have lost their way and bought into this, bought into this idea that we've got to protect the current twelve and I just think that's a fundamental flaw and I hear some chuckling and maybe I am too naive for this job, I decided to become a Republican because I thought we, as Republicans, believed in a certain set of principles and ideals and when I see one of the fundamental ideals behind government being violated, I just can't bring myself to support it. Thank you.

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[*24] Senator Lucas: Senator Cooper, many of my constituents were concerned about their not being placed with District 1. Can you explain to me why that was not possible?

Senator Cooper: Thank you, Senator Lucas, I know that there are numerous members of the community of Durham, particularly in a minority community of Durham, who are concerned about this plan. **[*25]** Currently in the 12th District is where the minority community of Durham resides. Unfortunately, that is the very tale end of the 12th District and I think everyone understands that in order to draw a map that is constitutional, you cannot include Durham in the 12th District and I think that, although the wishes and the desires may be there, it's not possible. The reason that, really twofold, as to why we did not go with the Durham County and pick up the minority portion of Durham County and put it in the 1st, the first reason is that we very much wanted to retain the rural agrarian nature of the northeastern North Carolina 1st District. That was very important. The court talks a lot about communities of interest and when you put urban Durham in with the rest of rural northeastern North Carolina, you run into the same problems that you run into with Senator Cochrane's amendment and you can . . . . of the courts, and secondly, I do think if you did that then it would be clear that race would have been the predominate factor in drawing the 1st District. For those two reasons, it was not done.

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